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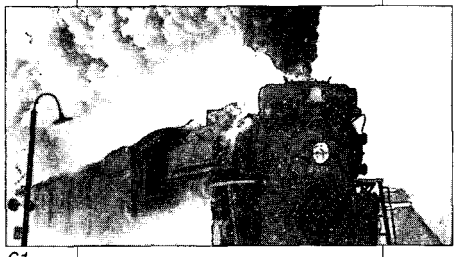

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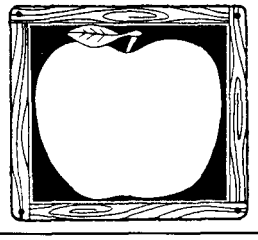

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POLITICAL PARADOX

VIRGINIA I. POSTREL

One of the most interesting things about Ross Perot the businessman is that he owns an estimated 20 percent of Next Inc., the computer company founded by Steve Jobs after he left Apple. At birth, Next wasn't given much chance for survival. Jobs's vision, the conventional wisdom held, was inspiring but out of date. The world had no niche for a new line of computers.

Perot's multimillion-dollar vote of confidence gave the company both capital and credibility. Next is still struggling, but the knee-jerk cynics quieted when Perot stepped in. His money transformed Next from the refuge of an obsolete visionary to the property of two legendary entrepreneurs. It recast Jobs from deposed corporate chieftain to ever-promising whiz kid.

Such is the power of the Perot mystique—and the Perot millions. Perot the legend recalls a different time, not so long ago, when giants built a new American industry on optimism, ingenuity, and tiny slips of silicon.

In those days, the business sections of bookstores stocked titles that evoked a sense of grandeur: *The Soul of a New Machine*, *Fire in the Valley*. Today, we have *Den of Thieves* and *Merchants of Debt*. And today, Ross Perot is running for president.

Perot the politician is not, however, Perot the legend. And at the heart of his campaign is a contradiction—a repudiation of the very culture and policies that produced it.

In his populist quest for the White House, Perot, like the Democrats, is running against the 1980s. Unlike the Democrats, of course, he doesn't talk about greed; that would be absurd for a billionaire. Rather, he attacks the dynamism of the decade, the changes that it wrought on American industry, and the government policies that made those changes possible.

"I think the big problem in the '80s, was we had all this silly stuff we called deregulation," he told *TV Guide*.

"Our real problem is our giant companies, like IBM, are downsizing. General Motors is downsizing," he said on *20/20*.

"Junk bonds are by definition junk," he told Phil Donahue.

Yet Perot's campaign is built, quite literally, on the businesses that transformed America in the 1980s. It was through CNN that he found his supporters and declared his potential candidacy. And it's on MCI lines that his phone banks receive calls from Perot enthusiasts.

In a decade in which competition shook loose the corporate structures of such behemoths as IBM and General Motors, entrepreneurs Bill McGowan and Ted Turner built new, lean organizations that broke up monopolies and reinvented U.S. communications. These creations relied on strong-willed founders, new technologies, and deregulation—the same deregulation that permits talk shows to book presidential candidates without facing the chaos of "equal time." Both MCI and CNN took on staggering amounts of debt—Drexel-placed junk bonds in MCI's case—to finance their growth. Considered in this light, the Perot campaign seems to have a bad case of self-hatred.

Perot's paradoxical relationship with the 1980s becomes easier to understand when you remember that, despite his investment in Next, he belongs on the other side of the great computer divide from Steve Jobs. Perot's is the white-shirted, hierarchical culture of IBM, a world of giant mainframes run by central controllers—not the bohemian, fluid culture of Silicon Valley, where desktop machines put power in the hands of individuals.

And despite his love of technological fixes for political gridlock, Perot's revolution is a rebellion against change, against the dynamic culture that produced CNN and MCI and Steve Jobs. On the "wedge issues" of the 1990s, he stands on the side of centralism and stasis, not choice and change.

Against the "borderless world" of free trade, international businesses, instantaneous communications, and large-scale immigration, Perot poses a warlike obsession with foreigners (in his litanies of denunciation, he attacks not lobbyists, but "foreign lobbyists"), opposition to free trade with Mexico, and nationalist industrial policy. Rather than push for educational innovation and parental choice in Texas, he backed central decision making to enforce bureaucratically set standards; in the education-reform debate, he stands with the authoritarians, not the pluralists.

And on that most telling issue, national service, Perot supports universal conscription. The military model is his ideal.

"They take these same people, bring them into the military, take them through basic training, turn boys into men, girls into women. They teach them honesty, they teach them integrity, they teach them moral and ethical values, they teach them teamwork, and then they go out and practice, practice, practice. And the result is what you saw in the Middle East," he told CNN's Larry King a year before declaring that he might run for president.

"Let me give you a suggestion: Public service; every young person in this

country gives two years of his life in public service. Can you imagine how that would change this country? I don't mean all in the military; across the board....We would change this country forever. If you and I had had that experience as young people, we would have known as young people what government could and couldn't do, among other things, right? We would have always voted and we would have been much more committed to this country."

This conscription would apply, he said, to "every young person. And nobody could cop out."

Perot the businessman can understand the value of investing in Next. But Perot the politician doesn't understand the value of letting an 18-year-old Steve Jobs serve himself rather than the government.

The personal-computer revolution and the national prosperity it engendered were made possible by the end of the draft, a policy change that allowed kids like Steve Jobs and Bill Gates to drop in and out of college, to fiddle with computers, and to reinvent the world. That revolution wasn't planned, it wasn't directed, and it wasn't very tidy. Companies rose and fell, went in and out of business, hired people and laid them off. Like the rest of the '80s, the personal-computer revolution was messy. It was private, it was apolitical, and it lacked "leadership." Yet it made us rich and it made us free.

We will not recover our optimism, or our country, by handing a mandate to a man who would be Boss—however legendary, however rich. The source of wealth lies not in the corridors of power but in the hearts and minds of men and women free to live without leaders.

BEWARIN' O' THE GREENS

RICK HENDERSON

"It is never easy to stand alone on principle, but sometimes leadership requires that you do," President Bush told representatives of 178 nations at the U.N.'s Earth Summit in Rio de Janeiro. He correctly pointed out that the United States has taken the toughest stand on environmental policy of any country. And except for a few Bushlike gaffes—calling himself a "greenie," for instance—the president did pretty well under the circumstances.

Two weeks of bluster and browbeating by environment ministers and green special-interest pleaders didn't persuade Bush to endorse any enforceable treaties. Still, the president approached the summit in classic Bush style. His narrow focus—jobs vs. environmental protection—will give him a few short-term political benefits. But had he also made a broader assault on apocalyptic environmentalism, he could have recast the debate so that sensible people could start crafting intelligent policies.

The economic costs of environmental regulations are staggering. The late columnist Warren Brookes placed the annual costs of the 1990 Clean Air Act alone at $40 billion. Other pollution controls cost at least $100 billion each year. The benefits of these regulations are less dramatic. For example, Resources for the Future's Paul Portney has estimated the annual benefits of the Clean Air Act at no more than $15 billion.

Nonetheless, green activists contend that additional environmental regulations—especially those that mandate "clean" technologies—will encourage rapid economic growth.

"The biggest new market in the history of world business is the market for the new products and new processes that will make possible economic progress without environmental destruction," Sen. Al Gore (D-Tenn.) told CNN on June 12. "Millions of jobs are at stake unless we can lead the environmental revolution and create the new jobs that will come out of this revolution." This argument has become a mantra for Gore, the Environmental Defense Fund's Michael Oppenheimer, and other "market-oriented" greens.

But abandoning existing technologies, retooling factories, and diverting expertise to fulfill green goals levies costs beyond the mere out-of-pocket expense of new equipment. Gore and Oppenheimer ignore the alternative uses to which the same investment of time, talent, and capital could be put—the "opportunity cost" of paying for mandatory environmental measures. Using their logic, the Los Angeles riots were an economic godsend—think of all the jobs rebuilding the city will create!

It's difficult for Bush to make a compelling case against command-and-control regulations. His administration, after all, championed the Clean Air Act and the Americans with Disabilities Act. As "the regulatory president," he is hardly credible denouncing the economic costs of regulation.

Bush would occupy firmer ground if he scientifically challenged apocalyptic environmentalism. Pick your doomsday scenario: global warming, ozone depletion, acid rain, deforestation, pesticide residues, population growth. The scientific consensus in each area clearly indicates no cause for alarm.

These emerging areas of consensus frustrate the apocalyptics. "It is journalistically irresponsible to present both sides [of the global warming issue] as though it were a question of balance," bleated greenhouse alarmist Stephen Schneider in *The Boston Globe*.

But if there is only one side to the real story, it isn't Schneider's. Every responsible survey of climate-change researchers (including one by Greenpeace International) shows that fewer than one in six believe runaway warming will occur.

In Rio, George Bush was correct to caution against unwise regulations. The administration should also engage in a spirited assault against the eco-doomsters. An army of honest scientists could readily step forward to confirm the hopeful news.

THE PRICE OF TIDES

JACOB SULLUM

You love the smell of the sea, the feeling of sand between your toes, the sound of waves rolling in, the sight of pelicans soaring above blue-green water. So you buy a piece of beachfront property and build the house of your dreams, a mere 100 feet from the ocean. Twenty-five years later, due to steady natural erosion and a couple of storms, your house is a bit closer to the ocean than you'd like. In it, in fact.

In a free society, the government allows this sort of thing to happen. But that does not mean that it should encourage such recklessness by promising to pay for the consequences with other people's money.

The federal government has been making that promise since 1968, when Congress established the National Flood Insurance Program, which covers losses from storms, sea-level rise, hurricanes, and erosion. Critics of the program have long argued that it contributes to overdevelopment of coastal land by providing insurance at artificially low rates. In response, the House last year approved, by a vote of 388 to 18, a bill that would restrict federal flood-insurance coverage in areas especially vulnerable to erosion, phasing it out completely for many properties. A similar measure ran into considerable opposition in the Senate this year, and its fate was uncertain in mid-June.

The legislation has provoked a familiar confrontation between environmentalists and property owners. In this case, however, the environmentalists happen to be right.

True, the Coast Alliance, the umbrella group that is pushing the insurance restrictions, is interested in more than cutting government subsidies for construction. Although the legislation focuses on erosion, the alliance's main concern seems to be pollution, which it links to all coastal development.

Still, the environmentalists have a point. The flood-insurance program was designed to remedy a "market failure": Property owners in certain areas found that flood insurance was prohibitively expensive or impossible to obtain. The problem is, that's not a market failure. That's the market working. That's the market saying, "Don't build here! Are you crazy?" Subsidized flood insurance muted that message. So it would not be at all surprising if the program led to construction that otherwise would not have occurred.

Federal flood insurance is quite a bargain. The Federal Emergency Management Agency, which oversees the program, says the average annual premium for relatively new policyholders is about $950 (overall, it's about $250). If premiums were set according to sound actuarial principles, on the other hand, the owner of a house valued at $185,000 (the program's maximum coverage) and located seaward of a 10-year erosion line would pay at least $18,500 a year for flood insurance.

Furthermore, the program allows little rate variation; premiums don't even go up after repeated claims. So federal flood insurance is an especially good deal for people who build in the riskiest areas: Repeat claims, which involve only 2 percent of insured properties, represent nearly a third of total losses.

The program is a hefty, taxpayer-funded bailout waiting to happen. Covering 2 million or so policyholders, it insures about $205 billion in (mostly coastal) property but holds only a few hundred million dollars in premium revenue. FEMA says one bad storm year, which many meteorologists think is long overdue, could generate claims of $4 billion.

So the strongest objection to the proposed flood-insurance reforms is that they leave the program largely intact. This is not the objection raised by the owners of coastal properties, of course. Among other things, they complain that the restrictions on coverage amount to "back-door federal land-use planning."

But the flood-insurance program already amounts to front-door federal land-use planning. Municipalities that participate in the program are required to set rules that restrict all coastal construction, whether or not it's covered by federal insurance. And the law requires federally insured banks and S&Ls to insist that mortgage applicants in those communities buy flood insurance. These restrictions are much more troubling than conditions on coverage. But they are part of a predictable pattern: From the farm program to the National Endowment for the Arts, the government often uses subsidies to justify regulation.

Policyholders also complain that the insurance restrictions would drastically reduce the value of their property. This is unfair, they insist; the government should live up to its obligations. Taken seriously, this argument would mean that the very existence of a government program justifies its continuation.

But if property owners did not have a right to demand that their fellow citizens subsidize their coverage before Congress created federal flood insurance, they do not have such a right now. An expectation is not an entitlement. Those who rely on government promises, like those who build too close to the ocean, should recognize the risk they're taking.

IN MEMORIAM

The cause of liberty lost a friend in May, when Roy Childs died of a heart attack at the age of 43. Roy may be best known for his work with Laissez Faire Books and for founding *Libertarian Review* in the late 1970s, but I met him as a lecturer at a Cato Institute summer seminar 10 years ago. Witty, thoughtful, and a fine writer, Roy was among the most popular lecturers with students. What impressed us most was his friendliness, his willingness to stay up until the early morning discussing with earnest young people issues he must have discussed hundreds of times before. Everyone who knew Roy will miss him. **—C.O.**

"We must connect our ethical principles to a much broader and deeper understanding of how the world works if we hope to be morally responsible in our thinking and actions." —Lester W. Milbrath

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LETTERS

Dangerous Thoughts

Charles Oliver's attack on the Endangered Species Act ("All Creatures Great and Small," Apr.) represents an important contribution to a new and reformed environmental policy. Repeal of this act, which he recommends, would follow from a basic change in approach: We should not base policy on providing intensive care to species at death's door. Rather, we should concentrate on enlarging the size of wildlife preserves, where large numbers of species can live unimpeded. The protection of wetlands can stand as a valuable part of such an approach.

The government, however, must respect the Takings Clause of the Fifth Amendment in pursuing this approach. It must not pass laws that diminish the value of property, or the opportunity of landowners to enjoy such value in full measure, and then leave these owners to carry the resulting financial burdens entirely on their own. Rather, governments must compensate the owners in consideration of such burdens and often must expect to buy the land outright, in the fashion of the Nature Conservancy. That would put an end to the present situation, in which environmentalism is an ally of socialism and an enemy to private property.

T. A. Heppenheimer
Fountain Valley, CA

CHARLES OLIVER MAKES quite a leap from his reasoned criticism of the Endangered Species Act to the assertion that extinction is good because it is natural. I'll not argue that extinction has always been a "fact of life" on earth. Over millions of years, new species arose to take the place of those that couldn't adapt to changing conditions. The problem today is man's incredible escalation of the process through his own massive population growth and his deliberate alteration of natural systems. I don't consider this trend to be particularly "natural." Species are being killed off rapidly before new ones have a chance to develop. We don't need the EPA to tell us that the outlook for our world is very sad indeed.

Of course, Oliver would discount that remark as a value judgment that he obviously doesn't share. I don't have the answer to the environmental dilemma, but I know it lies somewhere between mindless, politically motivated environmental activism and the "who cares" mentality of Oliver. My basic libertarian philosophy is at odds with what I perceive as a world on the brink of ruin. Oliver would use the EPA's inaccuracies and political motivations as an excuse to continue ruining it.

Laura Ainsworth
Waxahachie, TX

CHARLES OLIVER MISSES the point of the economics vs. the environment issue. What is or isn't a species is not the problem; our ever growing and ceaselessly rapacious numbers are.

The more an ecosystem moves toward domination by a limited number of species or by a single species (i.e., us), the greater are the chances of that system suffering a catastrophic crash. As homo sapiens is brought under control, those other creatures great and small will be able to take care of themselves.

Sargent T. Reynolds
Woodland, CA

CHARLES OLIVER GOT ME boiling mad. While I appreciate his concerns about the extremes that the environmentalists ad-

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by Ted Nicholas

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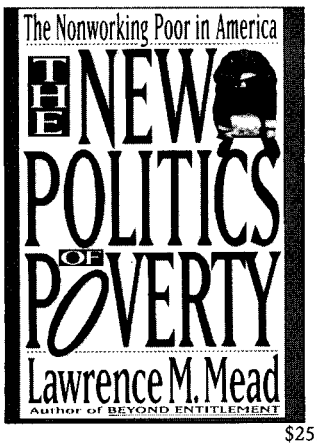

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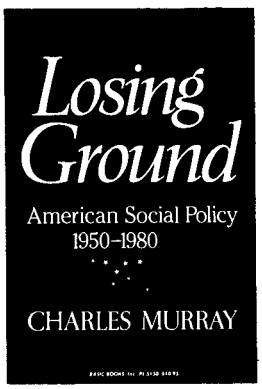

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LETTERS

vocate, I resent the attitude that if it is in the best interests of mankind, at this particular moment, the environment can simply be manipulated and the existence of species and subspecies terminated. Where is it written that we can do whatever the hell we please with the environment?

Fred Bluestone
Ellenville, NY

Mr. Oliver replies: I think that Ms. Ainsworth's letter is indicative of how closely people read articles that challenge their beliefs. It was not the EPA that I criticized, but the Fish and Wildlife Service. Similarly, Mr. Reynolds seems to have overlooked that portion of the article in which I argued that there is no proof that man's activities have greatly accelerated the process of evolution and extinction of species. So let me repeat: The only "proof" we have of massive species decline is the unsubstantiated assertions of chronic (and chronically wrong) doomsayers such as Paul Ehrlich. Let's get it straight: The Endangered Species Act is not going to save the world, but it will, in Mr. Reynolds's words, bring homo sapiens "under control."

Finally, several of the letters took me to task for not distinguishing between the "natural" evolutionary process and man's influence upon species. I see nothing unnatural about man's activities. It's called natural when beavers dam a stream, flood a valley, and change the ecosystem, but not when men do the same thing. This distinction is false. From the time men discovered that they could keep warm by wearing animal skins, to the cultivation of crops and the domestication of animals, to today's skyscrapers, man has flourished by adapting his environment to himself. It's our method of survival, and it's just as natural for us as it is for cats to prey upon mice.

Corporate Wrongs

I was very surprised to see Deborah Hallberg's article on top corporate executives' supposedly "excessive" pay ("Top Cats," May). Nowhere is "excessive" defined. What would "nonexcessive" pay be?

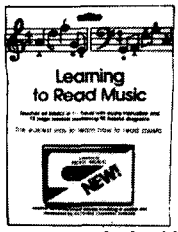
Top executives constantly receive—and often accept—offers to work for other companies. To retain those who are best qualified, boards of directors must offer competitive pay packages. Hallberg offers no evidence that current compensation levels are the result of some process other than a free market for managerial skill.

She notes that golden parachutes and poison pills usually go unchallenged by shareholders. But what about when they are challenged? Of 16 shareholder resolutions sponsored last year by United Shareholders Association (USA) to redeem or submit poison pills to vote, only three passed. Of 11 USA resolutions to restrict golden parachutes, none passed (based on mid-May proxy results).

In fact, of a total of 101 corporate governance resolutions last year, only eight passed. This suggests that most shareholders, or at least those who vote in proxies, are relatively content with current management policies and do not believe there is a "lack of accountability in the corporate system."

Hallberg does not consider the possibility that the supposed "battle between shareholders and managers" might be media hype initiated by a minority of shareholder activists who—claiming to speak for shareholders in general—wish to use the SEC to gain greater control over corporate decision making. She offers no evidence that most shareholders wish to have such control; but activists' proposed proxy changes would give them increased capacity to push various agendas, and these agendas may not be in most shareholders' best interests (e.g., electing union leaders and command-and-control environmentalists to boards of directors).

Since governance policies vary by company, investors who do not approve of one company's policies can choose from 13,000 other publicly held companies or can refrain from investing in that company in the first place. The markets for investors' wealth and for corporate control are shareholders' best protectors. Expanding government intervention into shareholder-manager relations is not "promising" but



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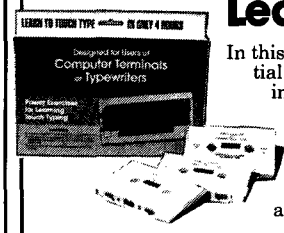

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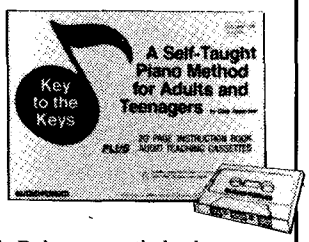

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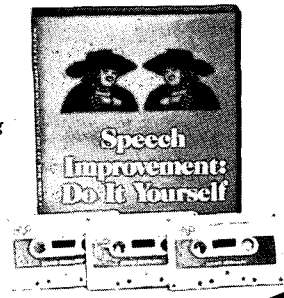

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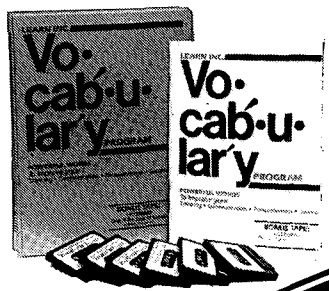

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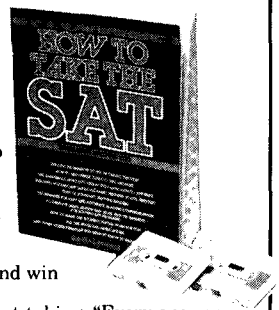

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alarming, because it can lead only to the further erosion of the corporation as a voluntary, contractual association.

D. T. Oliver
Capital Research Center
Washington, DC

DEBORAH HALLBERG clearly misses the mark. I am surprised and disheartened to read such an article in a magazine devoted to "free minds and free markets."

Hallberg chooses to ignore the number-one weapon that the shareholders have at their disposal in the event they find executive salaries to be "too high": They can exercise their right to sell their stock. In a free market, no one is coerced into buying shares of a public company. It's that simple. If you don't like the pay scale, don't use your dollars to vote for the company's success. Hallberg seems to assume most shareholders espouse her views. If enough of these people put their money where their mouths are, perhaps business executives would be enticed to lower their own salaries.

Lance Vitanza
Los Angeles, CA

Ms. Hallberg responds: The question of whether executive pay is excessive or not should be settled by the company's shareholders. Unfortunately, shareholders have too little say over executive compensation. Instead, salaries are set by a board of directors that is handpicked by the company's CEO.

The CEO picks friendly directors and pampers them. The result is an insular club that too often protects its own at the expense of the shareholders who own the company. Measures that help return power to shareholders are to be applauded. Denouncing these changes as "government intervention into shareholder-manager relations" ignores how corporate executives and their lobbyists have themselves gotten government to write the rules in their favor.

To argue that shareholders must like the current situation because they do not more often challenge board decisions is to ignore the difficulty individual shareholders face when they oppose the board. There is a simplistic appeal to the argument that if a shareholder doesn't like the way a company is run or the salary of its top executives, he should simply sell his stock.

But think about it a little more closely. If someone owns a restaurant, would he be wise to let the managers set their own salaries? And if the restaurant owner did let managers set their salaries and they paid themselves more than he thought they were worth, would anyone advise him just to sell the restaurant?

Polite Points

Thank you for reviewing my book, *Rude Awakenings* ("The Poor Among Us," June). I agree with most of reviewer Cassandra Chrones Moore's observations, but there are a few points that I'd like to clear up.

1) I am not "reluctant to recommend market-oriented policies." I generally find them to be the first and most important part of any strategy. Sometimes, however, the market alone cannot achieve an acceptable balance between economic efficiency and social justice.

2) While I do not recommend the *instant* abolition of all forms of rent control, I do recommend that all forms be phased out. In the interest of honesty, I have to admit that there is no proof that *moderate* forms of rent control contribute to homelessness.

However, I believe that in restricting the opportunities of small landlords to make big profits in situations of housing undersupply, we are cutting off a major avenue for the poor to acquire equity through buying the place next door and fixing it up. Often, as William Tucker has demonstrated, the profits of the working poor are held down to keep rents low for the professional classes.

Small entrepreneurs are forever victimized by every kind of regulation we can cook up. Theirs is much of the energy needed to shape up the inner cities. If we are going to solve our urban problems, we need to get government off their backs and place it at their side.

3) Moore writes that I fail to "impose costs on municipalities practicing exclusionary zoning." I think that I do impose such costs by recommending that states set low- and moderate-income housing production goals for such cities and require them to meet these goals or pay a price.

By the way, I believe that such housing production can usually be accomplished through a city's redirecting the same zoning and other regulatory powers that it currently uses to keep out such housing.

Richard M. White Jr.
Berkeley, CA

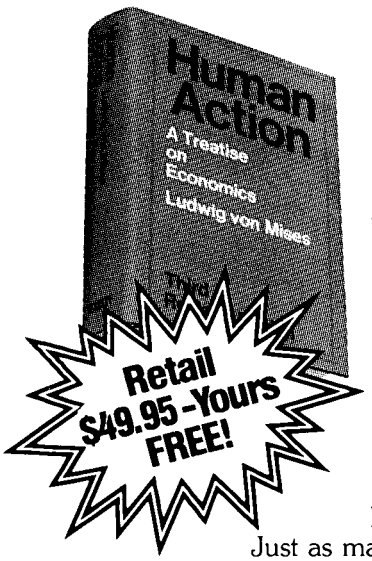
No Association

The June 1992 issue of REASON carries a full-page advertisement for a product of the Life Extension Foundation, an organization about which I know nothing. I am concerned that the advertisement could give the false impression that I endorse their product. The ad's summary of my statements on aspirin from my monograph, "Drug Lag: Federal Government Decision Making," is correct (although it is on page 49, not page 48). I do not endorse their product.

Rita Ricardo-Campbell
Hoover Institution
Stanford, CA

About July's table of contents . . . You may have noticed that not all of the articles in REASON last month were indicated in the magazine's table of contents and that those that did appear were not necessarily assigned accurate page numbers. If you attributed these aberrations to conscious metaphors for the chaos and disorder that overcame Los Angeles as we were putting the magazine to bed—you're generous. The fact is, we messed up.

Correction: In "Read Our Lips" (May), the president of the New Jersey Business and Industry Association was wrongly identified as James Coe. His name is, in fact, Bruce Coe.



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The Cocaine Kids

Everyone has heard of crack babies, one of the most compelling symbols to emerge from the war on drugs in recent years: Exposed to cocaine in the womb, they are born addicted and brain-damaged, with little hope for a normal life. They develop slowly, have difficulty forming emotional bonds, and fall behind in school because they can't pay attention.

This widely accepted image of crack babies has recently come under attack—not only by skeptical researchers but by one of the agencies involved in the federal campaign against illegal drugs. The January/February issue of *NIDA Notes*, the newsletter of the National Institute on Drug Abuse, reports that the media have greatly exaggerated the effects of prenatal exposure to cocaine. Under the headline, " 'Crack Babies' Not a Lost Generation, Researchers Say," the newsletter quotes experts who argue that "such labeling not only overstates the impact of prenatal drug exposure, it is harmful in and of itself to drug-exposed children."

The article notes that expectations of parents and teachers that "crack kids" will be irritable, unloving, stupid, or hard to control can become self-fulfilling prophecies. Indeed, all reports of long-term damage from prenatal exposure to cocaine have been subject to this sort of bias.

Another difficulty in research on crack babies is separating out the effects of variables such as nutrition, drinking and smoking, prenatal care, and the home environment. Since women who smoke crack are more likely to be poor, to neglect their health, to use other drugs, and to be inattentive parents, their children (as a group) would be worse off than average, both at birth and later on, even if cocaine exposure had no impact on them at all.

Dr. Deborah Frank of Boston City Hospital is conducting a NIDA-funded study aimed at distinguishing the long-term effects of prenatal cocaine exposure (if any) from the effects of the postnatal environment. "The popular press is way out ahead of the data in prognosticating horrible outcomes for these kids, particularly on the basis of biological risk," she told *NIDA Notes*. "All that has been shown in well-controlled blind studies that have been replicated over many sites is an incremental risk for shorter length, lower weight, and smaller head circumference at birth." These characteristics are statistically associated with health problems, but they are not permanent disabilities.

Dr. Ira Chasnoff, whose research is frequently cited by drug warriors, recently completed a two-year study of crack babies. "Their average developmental functioning level is normal," he told *Boston Globe* columnist Ellen Goodman. "They are no different from other children growing up. They are not the retarded imbeciles people talk about....As I study the problem more and more, I think the placenta does a better job of protecting the child than we do as a society."

—Jacob Sullum

The media have exaggerated the damage caused by prenatal cocaine exposure.

Private Operators

Who needs city workers? Not city government, it seems. *Privatization 1992*, a Reason Foundation study of privatization around the world, found that most U.S. cities have privatized at least one municipal service. For their efforts, the cities usually report better service at lower prices. Newark, New Jersey, for example, has privatized more of its city services than any other city in the Northeast. Total savings to taxpayers: over $1 million annually.

MUNICIPAL SERVICES PRIVATIZED BY THE 24 LARGEST U.S. CITIES

Service	Number of cities (of 18 responses)
Garbage and Sanitation	9
Parking Garage and Street Parking	8
Street Towing Operations	16
Street Sweeping	3
Street-Light Maintenance	3
Building Maintenance and Janitorial	12
Building Inspection and Engineering	6
Administrative	10
Public Works	11

Source: Reason Foundation Survey of the 24 Largest U.S. Cities

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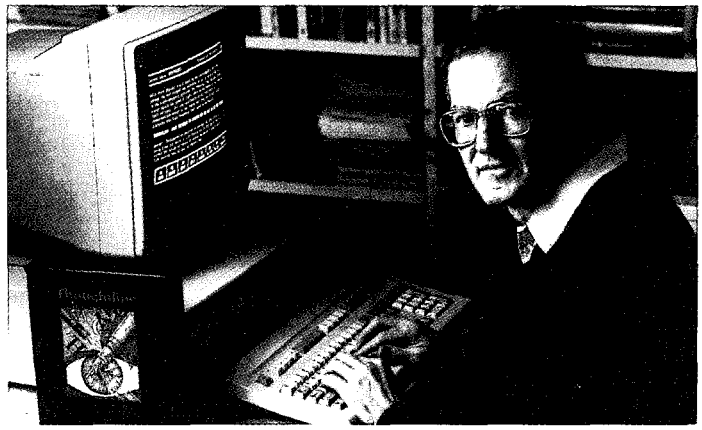

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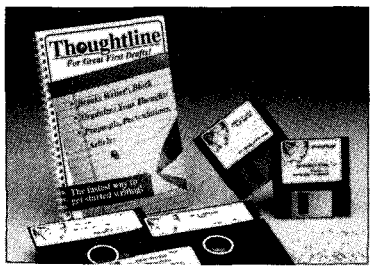

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Up in the Air

President Bush's timing was either very good or very bad.

On April 30, just as Los Angeles was going up in flames, Bush signed an executive order clearing much of the federal red tape that would stand in the way of privatization of state, local, and federal government assets. Because of the riots, Bush's order didn't get the publicity he probably had hoped for. But it seems the order may make it easier for L.A. to raise funds to rebuild.

Days after the riots, President Bush suggested that the city help raise the money for rebuilding by selling its international airport to private operators. Selling LAX could certainly put a great deal of money in city coffers. Two years ago, a Reason Foundation study pegged the market value of the airport at $1.3 billion; other estimates range as high as $2 billion. In addition, the city could then collect tax revenue on the operation.

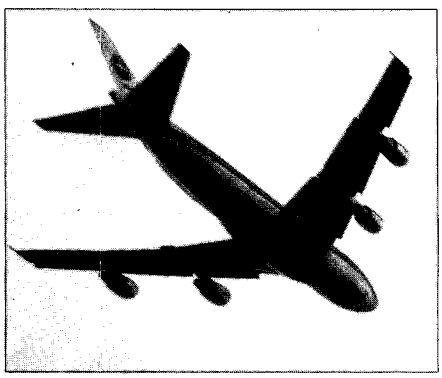
In fact, the idea of privatizing LAX had quite a bit of support before the administration made its suggestion. City Council members Joy Picus and Joel Wachs have publicly backed the concept; other council members have privately expressed interest. No City Council members oppose the idea, although some have expressed concerns about regulating a private airport.

In addition, several firms have looked into bidding on the airport. No doubt they've been impressed by the big profits earned by Great Britain's airports since the government privatized them in 1987.

Ironically, the Bush administration's remarks about the airport may have made privatizing LAX more controversial. During a May visit to L.A., Vice President Dan Quayle said the administration was only pointing out that its executive order had cleared away much of the federal red tape that might have slowed the sale of LAX. But Mayor Tom Bradley and others complained that the president was just trying to shirk the federal government's role in rebuilding L.A.

Still, the drive to privatize LAX continues. And the executive order has reportedly re-energized efforts to privatize airports in Indianapolis, Dallas, and New York. If airport privatization is successful, governments may then turn to privatizing other assets. A recent Reason Foundation study estimates that state and local governments could raise more than $227 billion by selling airports, roads, bridges, and other types of infrastructure.

—Charles Oliver



What's a Mother to Do ?

Earlier this year, a Washington state woman complained when her son's vocabulary took a turn for the worse after he listened to The 2 Live Crew's *As Nasty As They Wanna Be*. Outraged that her community was unable to protect the respectability of her 4-year-old's language, she contacted her state representative, Democrat Richard King, demanding action. She got it. On March 20, Washington became the first state in the nation to forbid the sale of certain types of music to minors.

The bill adds music lyrics to the state's 1969 law prohibiting the sale of material to minors, "the dominant theme of which, taken as a whole, appeals to the prurient interest of minors in sex, . . . and is utterly without socially redeeming value."

Gov. Booth Gardner signed the legislation, says spokesman Mike Gowrylow, because he "wanted to send a warning shot to the recording industry to begin policing itself." Yet record companies already put warning labels on albums (including *As Nasty As They Wanna Be*) to alert parents to explicit lyrics. In any case, the recording industry does not appear to be the only area that the governor would like to police. "The governor believes that children these days listen to more music than read books," Gowrylow explains, "and therefore parents need a little help."

In recent years, merchants in some states have been prosecuted under general obscenity laws for selling certain albums. In April, for example, prosecutors in Omaha, Nebraska, filed obscenity charges against two of the nation's largest record chains, Musicland and Trans World Music, for selling *As Nasty As They Wanna Be*.

At present, Washington is the only state to adopt specific dirty-lyric legislation. Several other states, however, appear to be creeping in that direction. In May, the Louisiana House of Representatives approved a proposal that makes criminal "the sale of certain labeled recordings to, or their purchase by, unmarried persons under the age of seventeen."

This bill, proposed by Rep. Ted Haik (D), is now before the state Senate. Two years ago, similar legislation, also introduced by Haik, made it past the House and Senate before being vetoed by Gov. Buddy Roemer. It's not clear how the new governor, Edwin Edwards, will view the bill.

Besides Louisiana, at least six other states—Arizona, Florida, Illinois, Massachusetts, Michigan, and Missouri—are contemplating proposals restricting access to certain kinds of music. In Michigan, 22 bills regarding musical obscenity have been proposed, one of which would give every community in the state the ability to create its own standard regarding "erotic" music.

Mickey Granberg, government relations director at the National Association of Recording Merchandisers, is afraid such vague legislation will be difficult for prosecutors to interpret and will "throw national distribution networks for films, records, magazines, software, and books into virtual chaos."

—N. K. Grovier

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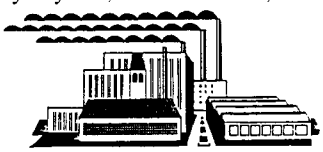
BALANCE SHEET

Assets

Happy Trails. More than 60 members of Congress voluntarily retire. Many of the perplexed lame ducks had never planned to do honest work again. In an interview on Fox TV, House retiree Howard Wolpe (D-Mich.) laments, "This is not a happy place."

Smog Exchange. Wisconsin Power and Light completes the first two emissions trades. Because the utility will reduce smog by more than the Clean Air Act requires, it earns emissions allowances. The Tennessee Valley Authority buys 10,000 allowances; each lets the TVA emit one ton of sulfur dioxide. Pittsburgh's Dusquene Light Co. will also buy as many as 25,000 allowances. This extra pollution may cost Dusquene $10 million. Still, *The New York Times* reports, sulfur scrubbers would have cost its ratepayers a lot more.



Tropical Solution. Another socialist government falls in Latin America. Two pro-privatization conservatives will meet in a July runoff for Ecuador's presidency. The candidate of the Democratic Left, which has ruled for 12 years, finishes fourth with only 8 percent of the vote, well behind self-proclaimed Hitler-lover Abdala Bucaram Ortiz.

Pay and Pray. The congressional pay-raise amendment, proposed by James Madison two centuries ago, becomes part of the Constitution. The amendment makes House Speaker Tom Foley apoplectic: It could wipe out a cost-of-living increase included in the 1989 pay hike. Push too hard for this one, Mr. Speaker, and you may become a back-bencher—if you're lucky.

Liabilities

Gotcha! (Not.) The Federal Communications Commission issues new rules banning broadcast "hoaxes." The agency can fine broadcasters as much as $25,000 for intentionally airing items it deems "false" or "confusing." This subjectivity could outlaw broadcast satire, as when Dana Carvey impersonates George Bush or John McLaughlin. And one broadcaster's "hoax" is another's *War of the Worlds*.

Tax Hiker. Connecticut Gov. Lowell Weicker wins the 1992 John F. Kennedy Profile in Courage Award (really) for taking "a principled stand for unpopular positions"—i.e., ramming an income tax down the legislature's throat. (See "Read our Lips," June.) Tapped-out Connecticut taxpayers might say, Don't give Weicker an award; put him on *America's Most Wanted*.

Truck Dump. The Commerce Department rules Toyota and Mazda "dump" minivans on U.S. consumers. Nonsense, says Toyota spokesman James Olson. Comparably equipped Toyotas cost more here than they do in Japan. And 90 percent of all minivans are made in the USA. But if you think minivans cost a lot now, Olson says, just wait 'til the Japanese can't sell them here anymore.

Hootenanny. The reauthorized Endangered Species Act could be worse than the original. (See "All Creatures Great and Small," Apr.) Greens lobby for tough new penalties; one viro favorite, notes *Technology Review*, would make offenders felons subject to five-year prison terms. Kill a spotted owl, go to jail.

—Rick Henderson

Traveling Pharmacy

Fed up with years of FDA foot dragging, relatives of Alzheimer's patients are launching a "buyers' club" to distribute unapproved drugs for the disease. Taking their cue from several dozen buyers' clubs that import large quantities of experimental drugs for sale to AIDS patients, the new club's organizers plan to sell THA, the promising Alzheimer's drug that the FDA has refused to approve. (See "Unequal Treatments," April.)

Although FDA regulations allow patients to import only small amounts of unapproved drugs for personal use, the agency has turned a blind eye to the AIDS buyers' clubs. But the Alzheimer's buyers' club is likely to attract more attention, partly because of the enormous potential market for unapproved Alzheimer's drugs: Between 4 million and 5 million Americans have Alzheimer's. Some 200,000 new cases are diagnosed every year—more than the total number of AIDS cases in the country.

Unlike the AIDS buyers' clubs, which resemble shops, the Alzheimer's buyers' club will be a moving target. Customers will mail their orders to an address outside the United States. Saul Kent, president of the Florida-based Life Extension Foundation, which is helping to promote the club, won't say whether that address will be the point of distribution for the drugs.

"Just let the FDA try to figure that out," he says. "They're going to have a very hard time tracking these people down."

A newsletter, *The Caregiver*, will advertise the club and provide its foreign mailing address. Like the drug shipments, the newsletter will seem to come out of nowhere, unnumbered and with no return address. Until now, relatives have had to smuggle THA in from abroad at great personal expense and risk.

"These are just ordinary, older, conservative Americans," says Kent. "When you cause people like that to become radical, they become more radical than the young people."

—Elizabeth Larson

Talkin' Dirty

Let's say your taste in home video is for the work of John Stagliano, John Leslie, or Henri Pachard. You've been worried that the Justice Department's war on porn might one day prevent you from watching the output of these fine smutmeisters. Rest easy. Well, easier anyway. The Justice Department has suffered a series of setbacks that bode well for freedom of sexual expression.

For the last five years, federal prosecutors have waged a high-profile war against producers and distributors of sexually explicit material. Since obscenity is defined by community standards, the feds have indicted the firms in conservative, Bible Belt areas. But the strategy hasn't worked as well as the Justice Department hoped.

Further, court rulings have taken away some of the feds' most potent weapons by making it more difficult for the government to seize all of a company's assets under racketeering and anti-obscenity laws. Previously, the threat of seizure was so great that some companies agreed to go out of business rather than risk conviction.

The string of setbacks for the Justice Department began last fall, when an Oklahoma obscenity trial ended in a hung jury. Then in October, the jury in a Dallas trial returned guilty verdicts on only two of eight videotapes that prosecutors contended were obscene. During sentencing, the Justice Department asked the court to seize all of the distributor's assets under a 1988 anti-obscenity law. But presiding U.S. District Judge Barefoot Sanders rejected the government's move. Sanders held that seizing California Publishers Liquidating Corp.'s $10.2 million in assets because of two tapes valued at $9.90 was "Draconian" and would violate the First Amendment.

Last March, the U.S. Court of Appeals for the Ninth Circuit dramatically limited the government's power to close businesses and seize property under the federal racketeering (RICO) statute and declared pretrial seizure of assets in obscenity cases "unconstitutional on its face." Just a few days later, the first important result of these rulings may have occurred in Oxford, Mississippi, where California-based Vivid Video pleaded guilty to three counts of distributing obscene materials, paid a $500,000 fine, and agreed not to distribute its products in Mississippi for two years.

The porn industry considered the settlement a victory for Vivid, since the company and its officers were allowed to continue operating. (In all previous settlements, the government had insisted that the companies and individuals involved agree never again to distribute sexually explicit materials.) Further, if the officers of the company are not convicted of any felonies for the next three years, their criminal records will be expunged. Amazingly, further obscenity convictions will not count as felonies for the purposes of this agreement.

—Charles Oliver

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BRICKBATS

During a news conference to announce his support for a constitutional amendment mandating balanced federal budgets, Sen. Dennis DeConcini (D-Ariz.) said, "We're going to finally wrestle to the ground this gigantic orgasm that is out of control." But enough about Bill Clinton's presidential campaign. What about the balanced-budget amendment?

In Virginia Beach, a jury has ordered a gun shop to pay $100,000 to the family of a teacher killed by a student with a handgun purchased at the store. The boy's uncle had purchased the gun and given it to him as a present.

Five Illinois state policemen have been suspended for "borrowing" 15 adult videotapes featuring the underage Traci Lords from department storerooms.

In Lexington, Kentucky, a woman has been arrested for allegedly throwing liquid drain cleaner in the face of a fellow church-choir member during a service because the woman was singing off-key. I imagine they aren't going to have many long-winded sermons in that church.

My thanks to *Heterodoxy* for informing me that the University of Massachusetts, Amherst, now includes pedophiles in its antidiscrimination code. If anyone can nurture young minds, it's a pedophile.

Delores Stanley, manager of a convenience store in Toronto, Ohio, removed all copies of *Playboy* from the store shelves. This got her promptly fired. Now she says she'll sue the store's owner: She claims her "forced" exposure to the magazines constituted sexual harassment and her firing interfered with her right to practice her religion.

Remember the study that found that left-handed men live 10 years less

on average than right-handers? The reasons aren't clear. But the author of the study, psychologist Stanley Coren, thinks it is because of all the stress of being left-handed in a right-handed world. So he wants us to declare war on (his term) "handism"—to expand civil-rights laws to forbid discrimination against lefties. Sounds like a sinister use of government power.

Medals given to the winners of a Los Angeles scholastic competition misspelled the word *academic*.

Glad to see that Dan Quayle is sticking up for old-fashioned values and attacking sexual irresponsibility in the media. Someone has to. But maybe he should have had a talk with his wife before she titled her new novel *Embrace the Serpent*.

The Council of Better Business Bureaus has asked the FCC to investigate a possible violation of federal regulations prohibiting characters on children's shows from selling products during the show itself. The culprit: *Sesame Street*. Seems the show has been running an announcement that it is sponsored by the *Sesame Street Live* stage show. The council contends that the announcement is nothing more than a plug for the stage show, and since the spot features Grover and Cookie Monster, it violates the ban.

First Things reports this sign at a recent pro-choice demonstration: "I would die to defend my Mom's right to an abortion."

Finally, this month's Brickbats would not be complete without some mention of the Los Angeles riots. One man wrote to the *Los Angeles Times* of his May 1 encounter with a panhandler wearing an oversized suit and a pair of Reeboks so new the price tags were still on them: "I asked him, 'Did you spend all your money on your new suit and shoes?' With a smile he said, 'No, I'm a looter, and I got this new suit and shoes looting.' I then asked, 'What do you think of the Rodney King situation?' He looked at me questioningly and said, 'I don't follow sports anymore.' "

—Charles Oliver

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Tired Libertarianism?

Do you have any of these symptoms?

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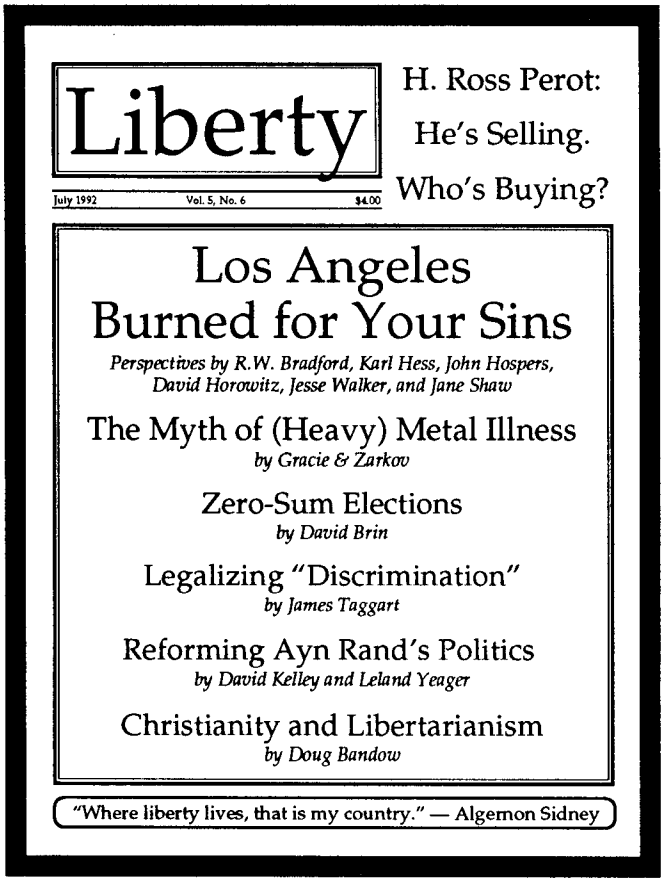
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APPETITE FOR DECONSTRUCTION

BY TODD SEAVEY

Video game scenario: You are Axl Rose, lead singer of the rock group Guns N' Roses. You are notoriously angry and insensitive, but you are given a chance to atone for some homophobic lyrics from your past by participating in a televised AIDS benefit concert. The concert will allow you to redeem your soul, be part of a veritable Harmonic Convergence of Cool People (including David Bowie, U2, and Roger Daltrey), and maybe—just maybe—save the human race from viral extinction. Unfortunately, you are being sought by the police, who want to arrest you for supposedly causing that riot in St. Louis, and there are rumors that ACT-UP will boo you off the stage. Can you elude the fuzz and the activists and save the planet before the game ends?

Axl played this game in real life and won in April, performing GNR's cover of "Knockin' on Heaven's Door" and making a surprise reappearance to sing "Bohemian Rhapsody" with Elton John and do "We Will Rock You/We Are the Champions" with Liza Minelli, of all people. ACT-UP was as silent at this "Concert for Life" as they were at the Oscars. And as I write this, Axl has not yet been arrested.

Why did Chicago-area police want to publicly arrest Axl (over a mere misdemeanor charge in St. Louis)? What is it about Axl that seems so dangerous that he must be handcuffed or heckled? Could it be that GNR is a troubling reminder that the passionate, romantic, nonrational part of human nature is a wild, violent thing rather than the sunshiny, environmentally conscious, Rousseauian flower child that so many would have us believe in these days? For an answer we must turn to the only thorough theoretical treatise on GNR: Danny Sugerman's book, *Appetite for Destruction: The Days of Guns N' Roses.*

Sugerman, in the hyperbolic style that makes this book a treasure, claims "Guns N' Roses are the death rattle of two thousand years of Judeo-Christian culture...the gyrating sound of Dionysus resurfacing...the music of man's animal powers refusing to be denied any longer, gnarling at the oppressive bit, threatening, dancing on the edge of a society collapsing in on itself." Sugerman compares the band, particularly Axl, to such artists as Baudelaire, Dostoevsky, Christ, and Nietzsche.

And he's serious. This is the only book I've seen that juxtaposes a photo of the band's lead singer with a picture of "Kali, the Hindu goddess of death, known for her powers of creation and destruction." It would be easy to laugh at Sugerman's analysis—to laugh long and hard—but there is truth in what he says. GNR captures the violent, oddly organic quality of modern urban life in songs where pleasant gardens, loving relationships, and urban night life turn twisted and ugly, songs like their first hit, "Welcome to the Jungle," "The Garden," "Garden of Eden," and "Used to Love Her" ("but I had to kill her").

But is Axl an angry radical or, as *Chronicles* magazine once suggested, a strange conservative? Some of his detractors may well suspect he has Pat Buchanan as a political adviser after the infamous lines from the song "One in a Million": "Immigrants and faggots / They make no sense to me / They think they'll come to our country / And then they'll do as they please / Like start some mini-Iran / Or spread some fuckin' disease." To understand, we must turn again to Sugerman. He explains that Axl is writing based on ecstatic bursts of anger born of personal experience rather than offering reasoned commentary.

Indeed, Sugerman declares that Axl is a modern shaman, a conduit for forces beyond his or anyone's full control. Sugerman suggests that even Axl's drug use is part of a spiritual quest to summon buried impulses in our collective unconscious and that Axl faces the same antidrug authorities who have sought throughout history to crush alternative modes of thought. Or, as Axl puts it in "Out Ta Get Me": "They break down the door and they rape my rights / But they won't catch me...I'm innocent / So you can suck me."

Axl's days as Dionysus-alpha-shaman-Kali-zeitgeistmeister may be numbered. A recent *Rolling Stone* interview reveals he is overcoming his anger through regression therapy and psychoanalysis. I just hope he doesn't become kinder and gentler to the point that he produces New Age music or joins the Men's Movement.

The world needs people like Axl, who, in Sugerman's words, can teach high-tech society something about its psyche "after mounting the shaggy back of a long-haired wildman representative of our primitive animalistic nature." That's from a passage comparing Axl to Dante. At least if we lose Axl, we'll still have this book.

Todd Seavey is a writer in New York City.

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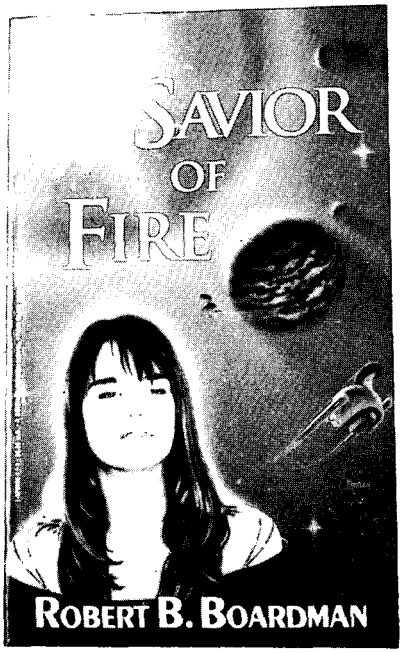

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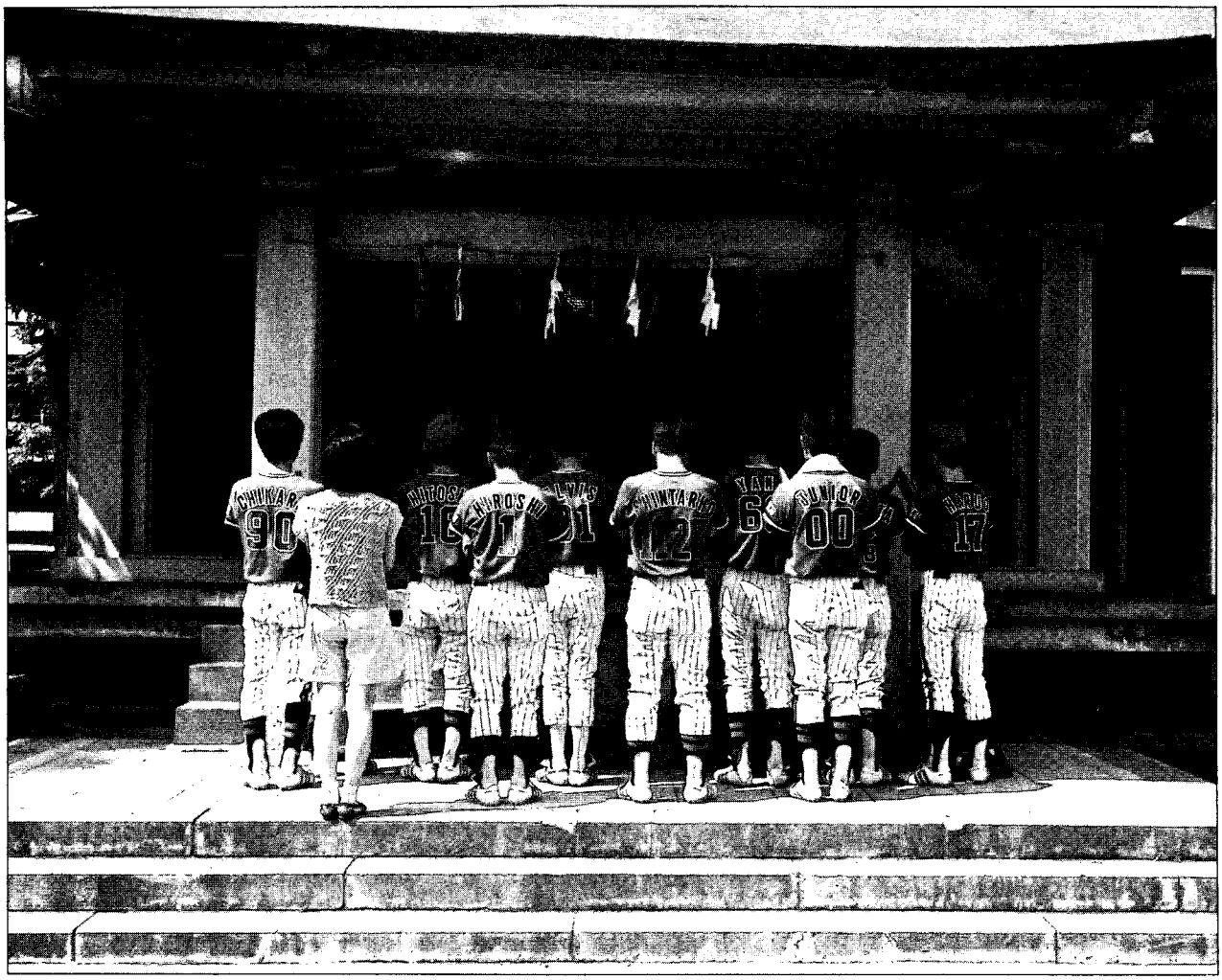
WHY IS JAPANESE BASEBALL SO DULL?

And why should Americans care?

BY JONATHAN RAUCH



In an office building colored violently blue so that everyone could see it, I entered the inner chamber of the Japanese industrial revolution. This was during the baking summer in Kumamoto prefecture, on the flatlands between the Kyushu coast and the mountains. I had seen two factories that day, one spanking new and one quite old, but both looking from the outside like corrugated-metal warehouses, promising little within but rolls of baling wire and stacks of crates. In fact, the interiors were full of big computerized claws and robots and other machines used for building machines that would later build other machines. This was Hirata Industrial Machineries Company, whose employees numbered 1,100 and whose sales ran to more than ¥20 billion a year. You will find many robots at Hirata Machine but no MBAs, and indeed not many college graduates. Hirata, like many Japanese companies, prefers to grow its own and hires something like 70 percent of its workers from high school or trade school. They build high-tech automated manufacturing systems, which in turn make high-tech electronics equipment for consumers.

JOEL SACKETT

They founded the company in 1946, right after the war, Yasunari Hirata told me. We spoke inside his office, somewhere within the disturbingly blue building. The Americans brought Jeeps with them after the war, he said, and his father saw them and believed that conveyances, transportation systems for industry, would be important. Father and son—the son was young Yasunari—originally started out by making pushcarts and baby carriages. The initial capital investment was ¥3,000. Since the banks were unimpressed, the Hiratas raised capital by saving money and wearing old clothes. They started with old equipment that they refurbished. The engineers, including the founders, may not have had much technical education, but they were willing to learn and they loved doing new things, and whenever a new machine arrived all the workers wanted to get their hands on it. They tinkered with everything. Later on the company graduated to making conveyor-belt systems. We learned as we went along, he said, by trial and error and from books and traveling; we decided what to make and then figured out how to make it. Now we make industrial robots.

I see the company as an infinitely growing child, he said. I will die, but it continues to live, and my responsibility is to see to that. And I want to continue to build better and better robots. A better machine every year, that is what I want. You know, you don't have to have something to start something. This he said with evident satisfaction.

Of course the story of Hirata Machine is the classic tale of Yankee ingenuity, transplanted to Kumamoto. It is a chapter from the book by Henry Ford and the others of that era. You remember that book. It is the one titled, "Build a better mousetrap and the world will beat a path to your door."

Yet the world bangs on the door with as much anger as eagerness. From an economic point of view the Japanese economy must be counted among the miracles of our age and ought to be regarded as an international treasure. It is a fount of innovation and instruction such as appears only once or twice in a century. But from the point of view of international politics, this same economy has been little short of a disaster. I met a number of Japanese who would have you believe that this is because the world does not like Asians in general and Japanese in particular, so that whites' achievements are welcomed while the achievements of Japanese are resented. Perhaps that is a problem. Certainly it is a problem in some quarters. But it is not *the* problem, and those who look to racism for the source of Japan's international headaches, especially the headache with the United States, are kidding themselves.

The trouble has more to do with Japan's attempt to use the outside world as a kind of garbage can for what economists call adjustment costs: the costs of changing jobs, moving around, and breaking off relationships. A small country can protect its powerful stakeholders from troublesome adjustments without causing a great deal of fuss internationally. But the story is different for a large country, a country that is a great trading power. The combination of government protection and private clubs and cartels keeps many small farmers in business, but it also keeps foreign farmers out and so costs them money; and when the market at issue is very big and very rich instead of very small and very poor, the foreign farmers notice and they are resentful. Same with the securities industry; same with the small-shops protection; same with the whole web of cozy relationships.

Though I know people who would disagree, personally I do not think that the attempt to dump adjustment costs on the outside world is caused by any special aversion to foreigners. (Nor is it uniquely Japanese. Everybody tries to do it.) I believe it has simply to do with the fact that foreigners do not vote in Japanese elections and are not tied into Japanese relationships. They lack both political pull and bonds of loyalty, and so are not cut in on the deals. Moreover, I do not think that the Japanese City Hall tries especially to thwart foreigners. Rather it tries to thwart newcomers. Unfortunately for the good of international relations, in Japan most foreigners are newcomers, and most Japanese are not. Now, in Japan, once you have established your personal ties and gotten in on your cozy deal, you are inside practically for good, whether you are foreign or not. Outsiders who are persistent and ingenious, and who are willing to pay the high initiation costs, do indeed get in, as for instance IBM and Coca-Cola (and Sony, once an upstart) have done. Then they enjoy fat profits, cozy relationships, and all the other benefits of membership.

Not long ago Pepsi began making rapid gains in the Japanese market thanks to an especially popular TV ad—which was promptly dropped by Tokyo's major TV stations, under pressure from Pepsi's giant entrenched competitor. Pepsi understandably screeched and might, I suppose, have tried to list the issue among Japan's unfair trading practices, except that the entrenched competitor was Coca-Cola. The difference between them was not one of nationality but of position and thus power. Coca-Cola, however, is an exception. Inevitably most foreigners are still outside, and many of those have war stories to tell.

And so the outsiders get mad. Especially if they are Americans, who tend to get worked up about justice. The outsiders say, "Twenty and 30 and 40 years ago, when you were flat on your backs, you were newcomers in America. Granted, life was not easy for you; but the easy-in, easy-out American system is paradise compared to what we encounter in Japan. Our economic hospitality put you on the map. And now how is our hospitality returned? With cozy clubs and Byzantine relationships and 'Members Only' signs and lectures about 'not trying hard enough.' Well, screw you. We'll get even."

Hearing this, the insiders are aghast. The plaintiffs have no case. Surely they misunderstand. The insiders say, "We worked our tails off to establish ourselves in America, whose markets were no pushover for small yellow foreigners. We learned your language and studied your consumers and built distribution networks. We made a vast investment over many years. We played by your rules in your country, and we made the customer happy. And how is our effort repaid? You now demand to play by your rules in *our* country. Your automobile companies complain of 'closed' markets but do not send us right-hand-

drive cars. Is that our fault? Your executives don't learn our language; your companies come into a country where trust and personal ties are the coin of the realm and then pull out after losing money for a couple of years. How dare you blame us for that? No. You must not demand special treatment. You must pay the same dues that all newcomers pay in Japan, and if you do you will enjoy the same benefits, and if you do not you have no right to complain."

The argument belongs in an ethics textbook. Within its own context each side is wholly justified and has a strong claim to justice. And there exists no neutral ground from which to adjudicate. One must simply choose. A heartbreaker.

Worse, I fear: a bonebreaker. As the anger grows, the temptation becomes overwhelming for the nations of North America and Europe to say, "Two can play your game." Indeed, the Americans and Europeans, especially the Europeans, have been playing the game of protectionism for many years. All they need is an excuse to redouble their efforts. If they do so, then the result is either a trade war or recourse to a political solution in which governments meet to allocate markets. ("We'll buy this many Sonys if you'll buy that many Fords. You give us 20 percent of your computer-chip market in exchange for 15 percent of our telecommunications market.")

Either result is a disaster for Japan, first and foremost among all the world's nations. Trade wars hurt most the countries that are most dependent on trade (read: Japan). And allocation of markets according to political clout, by its nature, favors the most politically powerful and hobbles the most economically competitive (read: Japan). This is why the Japanese are stupid and irresponsible to be anything other than the world's leading advocate of free trade, not merely following or complying but *leading*.

Moreover, Japan's practice of winking at cartels and harassing newcomers, however convenient for politicians and stakeholders, hurts no one as much as the average Japanese. As, indeed, many average Japanese are becoming aware. Traveling abroad in increasing millions, they have begun to see that coziness has its price: that by comparison with the United States or France they have two-thirds as many miles of roadway for every car, that only about two-thirds of their roads were paved by the late 1980s (90 percent in the United States, 100 percent in France and the United Kingdom), that apartment rents are twice as high in Tokyo as in New York City, that consumer prices are at least 30 percent higher than in the United States, that Americans and Europeans take for granted a number of household amenities—central hot water, a toilet inside the apartment rather than down the hall—that quite a few Japanese have been getting along without.

Therefore it is pretty clear in which direction the Japanese should move: toward liberalization, voluntarily and fast. Not because this is good for foreigners (although it is), but because it is vital for Japan.

There is not a great deal that the Americans can do directly to reform the Japanese system, nor does international diplomatic etiquette permit them to try. However, at the very least Americans should avoid making blunders. The biggest blunder, and one that most Americans actually commit, is to see the goal as reducing the U.S. trade deficit. The U.S. balance of trade has not much to do with Japanese economic practices and a great deal to do with macroeconomic forces in America—nor does it matter much anyway. Even people who try very hard have trouble finding any objective damage that trade deficits have caused to the American economy as a whole, and economic theory gives little reason to expect such damage. South Korea ran trade deficits chronically until 1986, and its industrial base was hardly falling apart. For the most part America's industrial base also is not falling apart; and if it were falling apart, getting rid of the trade deficit would of itself no more solve the problem than shooting out the alarm would extinguish a fire.

The tempting and dangerous trap is to seek commitments from the Japanese bureaucracy to manage away the trade deficit by playing macroeconomic games or, worse yet, by regulating imports and exports ("managed trade"). That kind of action would just re-empower the administrative state that blocks political and economic competition—precisely the wrong thing to do. Already the Japanese bureaucracy, like bureaucracies everywhere but less effectively opposed than most, tends to regulate everything that moves and keep secret everything that doesn't. (One day I read in the paper that the Construction Ministry had increased the permissible size of log cabins. Good news for Abe Lincoln.)

At a time when market forces are slowly eroding Japanese bureaucratic power, the ministries would like nothing better than a mandate from the American government to regulate Japanese trade. The United States must avoid doing favors for Japanese bureaucracies and cartels. At every turn it must encourage measures that open the system to newcomers, and so to selection by competitive trial and error. Getting rid of the laws that protect small stores, or exposing the Nokyo agripolitical machine to foreign competition, is just the right sort of idea; demanding that the Construction Ministry dispense untold trillions of yen on public-works projects to jigger down the trade deficit, or demanding percentage shares of Japanese semiconductor markets, is the wrong sort of idea. The way to keep this straight is to set the important goal first: not reducing the trade deficit to some arbitrary number, but unwinding the coils of Japanese technofeudalism.

The northern city of Sapporo erected a monument to the American educator William Smith Clark, inscribed with the advice that he shouted from his horse as he departed from the city in 1877: "Boys, be ambitious!" For many years Americans have been in the business of offering advice to the Japanese, not all of it as good as Clark's. I am self-conscious about having entered the advice business, because lately there has been an oversupply, and Americans have been talking when they would do better to listen. Where I have advised and criticized, it has been in the chin-stroking and, I fear, pretentious role of the benevolent American international citizen.

("Take two antimonopoly laws and call me in the morning.") In what follows, I venture into the kind of social system that is closest to my heart; and here where I advise and criticize, I do so on the comfortable and unassailable grounds of prejudice and greed.

My prejudice consists of the feeling that the most valuable and beautiful of all human products is not material but intellectual: the stock of tested statements that constitute our knowledge. Of course I am talking about science, but not just science: also the social sciences, history, even criticism and journalism—all the fields in which people search for truth about the world. My prejudice is that making knowledge is humanity's most important endeavor, and that to divert resources needlessly from this endeavor or to misuse them is a shameful waste. Similarly, my greed lies in my single-minded insistence that we never know enough or learn quickly enough. More, more, always more. When I see someone who could do more or better, I want him to get on with it.

For example, people sometimes (not often enough) take passing notice of the enormous amount of economic potential thrown away in the screwed-up markets of the Third World and the communist (or formerly communist) countries. Yes. But more upsetting still is to know that there are minds of extraordinary brilliance all over the world, thousands of them born every day, that are underdeveloped or underused. Only if they have the good fortune to gain access to the intellectual and educational institutions of the developed free countries are they likely ever to be nurtured and heard from. One could say much the same of America's inner cities. With human beings the trick is not to produce brilliance but to use it.

My own impression of Japan is this: The intellectual raw material is top-notch, as good as any in the world. Again and again I met people with remarkable minds. Yet here is a country with the world's most vibrant economy, with a well-educated citizenry singularly devoted to making the country better, with a population fully half the size of America's and more than half again the size of Germany's, yet with only five Nobel Prizes in science to its name—one thirtieth America's share, one twelfth Germany's, and exactly as many as Belgium's. Yes, Nobel Prizes are an inexact measure of nothing in particular; but my own experience in Japan confirmed the story that the Nobels seem to tell—a story of wasted intellectual resources. Japan has all that is necessary to make a magnificent contribution to the world's stock of knowledge, but it is failing to do so.

Science, like Japan, has been wildly overmystified. When you cut through to fundamentals, the whole liberal intellectual system, from the hard sciences to history and even to journalism, is really little more than an endless self-organizing hunt for error. We develop ideas and then, like stage mothers, shove them out into public view, knowing that if we are found right we can get famous and that if we are found wrong we can try again; then countless others look for holes, shortcomings, weaknesses, poking and prodding, knowing that whoever finds a big mistake can become famous; in reaction the ideas are refined, reformulated, resubjected to public criticism; and what is left standing on any given day is our knowledge. In this way, knowledge moves forward.

Why is it a "liberal" system, as democracy and capitalism are? Because it is a public competitive-selection system that fixes rules rather than outcomes or special authorities. Everyone is entitled to check anyone, and no one is immune from being checked just because of who he or she happens to be. We rely on no one in particular to sort the true from the false and the fruitful from the frivolous.

"Particularly at school," a prominent Japanese journalist told me one day, explaining why Japanese baseball is so dull, "we are trained not to make a mistake, even if this means we achieve nothing spectacular." At retirement, he said, Japanese tend to express satisfaction not by speaking of their accomplishments but by saying that they made no big mistakes. One often hears variations on this theme—the Japanese hate to make mistakes—and on the whole I found it to be true. The exception is where everybody makes the same mistake together, in which case it is not a mistake. Now, aversion to error makes people careful, and there is nothing wrong with that. Especially not in industrial manufacturing, where the idea is to make large numbers of things perfectly, and where the Japanese genius for quality control has given the rest of us a humbling reminder of the importance of getting it right the first time. But aversion to error can also suffocate knowledge, if the conditions are not just so.

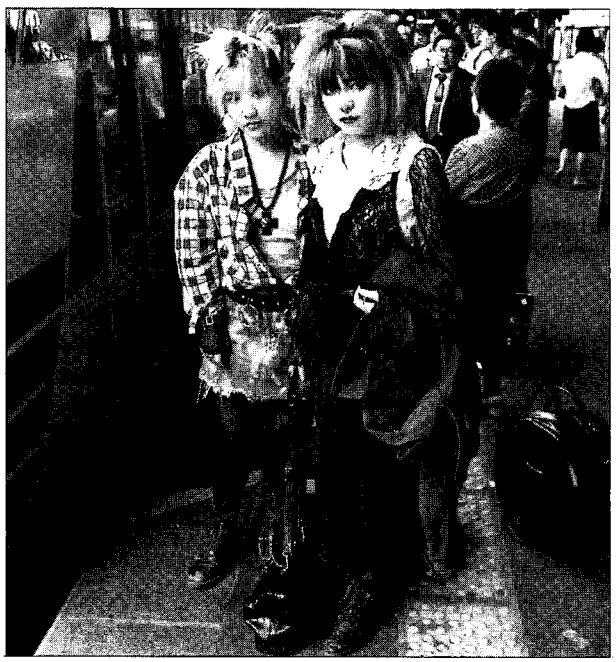
Conditions? Is something wrong? Missing? I met many Japanese who thought so. The writer and critic Shuichi Kato told me that in Japan disagreement is regarded as an unfortunate accident, an embarrassment to be papered over. Book reviewers told me that, in general, if they don't like a book they simply do not review it, or return it to the editor to be reviewed by someone who does like it. "An open debate," a Tokyo University economist remarked to me one night over dinner, "is nearly impossible in this country."

I often heard comments of that sort. Yet nowhere in Japan is there even a hint of the kind of centralized intellectual authoritarianism that Plato advocated and that since his time has become so familiar in the West, thanks to the big churches and the totalitarian states. There is no propaganda, no state manifesto in Japan. The Japanese are nature's own empiricists, and it would no more occur to them to kill for a theory than to die for one. As a matter of fact, where institutional regulations are concerned, Japanese academics are more free than their American counterparts. They receive tenure from the moment they are hired, and thenceforward are free to say or write anything they want.

Moreover, although some people have said that Japan is a place where nosy neighbors and high-handed bosses and government ministries effectively stamp out dissent, I found this to be unsupportable. In Japan dissenters and minorities are not crushed, they are ignored or marginalized. If you feel like saying something different, and quite a few people do,

you can say it with every expectation of personal safety and financial security, although also with little expectation of changing anything. On the whole, people speak out vocally and critically all the time, despite the society's conformist reputation. But something *is* amiss.

Science in particular and liberal inquiry in general consist of an infinite variety of activities, but one rule is necessary as a minimum. We say it is one thing to attack someone's theory, quite another to attack his person. "Of course I respect Professor Nosebinder, but his theory is absurd for the following six reasons." Actually, the distinction between proposition and proponent is an artifice, since propositions do not exist by themselves; science is littered with theoretical debates that broke down into personality contests and even feuds. But the important thing is that it is not respectable for this to happen, and if you take criticism of your ideas as a personal insult people are likely to say, "Oh, grow up." This is the principle, the social convention, that allows us to conduct public debate without severing personal ties. We kill our hypotheses, not each other.



People have missed the point about knowledge making in Japan. The Japanese need more curiosity, not more creativity.

In Japan, this convention exists but stands like a plant stuck upright in thin topsoil and only barely rooted. Masao Maruyama, the great intellectual historian, pointed out to me one day that the very concept of "opposition," as distinct from "enmity" or "antagonism," did not exist in Japan until the last century. When the great scholar and educator Yukichi Fukuzawa returned from the West in the mid-1800s, he had to invent a word (*hantai*) for "opposition" in this nonpersonal sense. Nor was there a word for "speech" in the sense of an address to one's peers, as distinct from preaching or issuing decrees or other forms of address from a higher-up to lower-downs. Fukuzawa also had to invent words for "support" or "agree" and for "debate" or "discussion" in the sense of open exchange and confrontation of ideas—so unfamiliar was the notion of social intercourse between ideas, as it were, rather than between particular persons. Even today, criticism tends to be taken personally and even viewed as an act of antagonism. This attitude is common enough everywhere, but in Japan the weight of social convention is not against it.

I watched one night as one of Japan's most prominent political scientists, a dignified man in his 60s, turned as ebullient as a schoolboy. He was explaining how much he enjoyed academic meetings abroad, and to show what he meant he waved his hand eagerly and exclaimed like a boy in class, "I disagree, I disagree!" In academic meetings in Japan, he said, you're supposed to listen expressionlessly; to raise a hand and object would be seen as odd, impolite, inappropriate. The best policy toward ideas you disagree with, he said, is one of benign neglect. "The best policy here is to be mute," he said. "Year after year you get accustomed—you get trained."

I said, But surely, *sensei*, a man of your eminence is at liberty to criticize when he pleases? No, he replied, on the contrary; the eminent have a special responsibility to restrain themselves if they cannot agree. The saying goes that when the wind blows, the tallest stalk of wheat must bow with the others. He no longer bothers going to academic meetings in Japan. To test ideas he relies instead on more frank private exchanges with other scholars and thinkers—people who know and trust each other. I said, An intellectual black market, so to speak? More like a gray market, he replied.

I cannot say it too often: This is not political repression or fundamentalist brainwashing. It is not the Soviet Union before *glasnost*, nor is it Iran under the rule of the totalitarian priesthood. It is not remotely like that. The essence of totalitarianism, from the Inquisition to the present, is the network of informers, the midnight arrest, the secret trial in which the accused is charged with believing incorrectly. You will not find any of that in Japan. Indeed, scarcely a day passes in Tokyo when you are not annoyed by political activists blaring high-decibel foolishness from soundtrucks.

Why, then, do I harp on criticism this way? Because people have missed the point about knowledge making in Japan. Especially the Japanese have missed it. We aren't innovative, they complain, not creative. Typical was an editorial headlined, "Wanted: Secrets of Creativity." No, no, no. The root of the problem is not creativity. In Japan, as any visitor to the high-tech wonderland of the electronics

stores will testify, there is plenty of creativity. It is practically running in the streets, if the creativity is salable and hence there are incentives not to waste it.

No, the crucial shortage is of curiosity and checking. Curiosity because to be curious is to look for mistakes, your own and other people's. Where curiosity is lacking, creativity turns imitative. And checking is more important still, because without it all the creativity in the world is like so much water trickling away between the fingers. Having new ideas is easy. You can do it three times a day before breakfast. But most of your new ideas will be bad. The hard part is to sort the grains of gold from the mountains of sand.

So who sorts the winners from the losers? Who else? Foreigners. *Gaiatsu*—"foreign pressure." The outside competitive-selection system sets the research agenda, and the Japanese go to work on it.

A prominent statistician says that the academic and government bureaucrats who underwrite research usually wait until an idea has become fashionable abroad before they consider it "certified" as worthy of pursuit in Japan—even if the idea originated in Japan. He recites a list of Japanese mathematicians and statisticians whose path-breaking work was ignored until foreigners discovered it or independently rediscovered it. Junichi Nishizawa, renowned for his work in electrical engineering, recites similar cases with evident disgust. In the case of a recent invention of his own, he says, the "sad fact" is that he must arrange to have the device used in the United States before he can convince his own countrymen of its value. "Japanese have low evaluation for Japanese results," he says, "but they have a very high evaluation of foreign work." A famous political scientist refers to Japanese as "importers and distributors" of foreign ideas—franchisees, as it were. Whole debates are picked up and imported to Japan, but not the critical mechanism that generates the *next* debate.

Intellectual *gaiatsu* has few untoward international side effects. It causes no trade friction and incites no diplomatic incidents. It merely—"merely"—keeps the Japanese intellectual establishment one step or two steps behind, always inside the frontiers of knowledge rather than extending them.

Much is being lost. In their single-minded determination to catch up with the West technologically and economically, the Japanese have built their society to feed and support industrial manufacturing. That is to be expected in a developing country (to a degree it happened in the United States during the last century), but in Japan it has gone too far for too long. The best minds are lured by prestige into manufacturing companies and into the bureaucracy that serves manufacturing companies; once there, the fine minds lose their fizz and go flat. The universities ought to be bubbling today but are not; they were founded as organs of the national developmental effort 100 years ago and have not outgrown their original stunted mission. The first article of the Imperial University Ordinance of 1886 reads: "The purpose of the imperial university shall be to provide instruction in the arts and sciences and to inquire into the mysteries of learning in accordance with the needs of the state." As for think tanks, Japan is full of them, but they by and large focus on economics and economic development ("in accordance with the needs of the state"). The work they do is solid and professional, but their agenda is narrowed by the narrow interests of the corporations and government bureaucracies that provide the bulk of their commissions and research fees. Economics is important, yes, but there is more to life than capital allocation and regional growth forecasting. What about the cycles of the earth, the theory of political struggle, the history of man, the stars?

I was just a sociological tourist in Japan. I took notes and drew maps, looking about me as only the outsider can do. I did not find The System, a capitalized entity weaving its web around the hapless common man. I found, in the end, just systems. There is no dark secret here. The Japanese are precisely as mysterious and unique as my aunt in Hackensack. I came to Japan wanting to know how I ought to feel about the place. I left knowing only how not to feel. Frightened. That is how not to feel.

Worried, yes, to the extent that Japan is a great power whose social institutions are consistently, perhaps fundamentally, hobbled by the trouble they have setting an agenda. A powerful nation that is too big to push around but that often cannot push itself: That is Japan. "I am very much ashamed to say this," Masao Maruyama said to me one night. "Japan can change only under outside pressure—ever since Perry." I am not *very* worried, however. These things tend to work themselves out, as long as nobody panics. One day, in exasperation at the latest article about the U.S.-Japan crisis and the threat to the world order and all of that, I thought, "I wish people would stop hyperventilating about Japan."

For a century and a half, the Japanese have run their country on the working assumption that everything in the West is better or more advanced. The dark side of the legacy is a clinging sense of insecurity that diminishes but does not go away. One of Japan's most famous journalists told me how struck she is during economic summit meetings by the inevitable group photos of presidents and prime ministers: Always they show one unblinkably different face in the midst of the tall white men. You need to know names to tell the French leader from the German, but the prime minister of Japan you can always spot at a glance. Yes, I realized, try to imagine how you would feel seeing that one of the people in the pictures is always obviously different and that this one is always you. You feel that perhaps you can never fully belong. But there is the other side, too. I had never before met so many people who examined their country so mercilessly for any comparative weaknesses and who were so driven to fix them. The Japanese absolutely cannot abide the thought of being second-rate. Neither, indeed, can the Americans, who are fleeing from that very thought today. Yet in Japan I saw precious little of the smugness and complacency that are so common among Americans, especially the patriots.

From Japan the Americans look more and more like a bunch of lazy whiners, no longer willing to try their hardest and

sacrifice to be the best. Within the mantle of exaggeration is, I now think, a molten core of truth. Americans on average still try hard and care about their country. Yet too many people *are* more interested in scavenging for carrion or gaming the system than in building a better country the old-fashioned way, with sweat. Books with titles like *Wealth Without Risk* are selling rather too well. People believe that they have government benefits coming to them and that the bill for the goodies belongs to someone else, which is why the federal budget deficit fails to go away. Saving is low, investment is low. High school students do in a week about as much homework as their Japanese counterparts do in a day—they do less studying, even, than Japanese elementary-school students—yet no one seems to expect much better of them. Racially and ethnically organized political groups are busy listing all the perks and positions they are entitled to by dint of being oppressed. Managers pay themselves fat bonuses and seven-figure salaries while their companies underperform. Labor unions call for protection from foreigners who work too hard for too little. Fathers walk away and families fall apart.

We will have to continue to rely on each other, nagging westward across the Pacific and competing eastward.

I do not mean to exaggerate. The old days were not so different and in many ways, of course, were worse. Moreover, the United States is blessed with what are probably the most adaptable and responsive social institutions in the world. Yet I worry, because America's problems today are moral rather than institutional, and moral problems are the hardest kind to fix. Japan's problems are the other way around. I believe I can tell you ways to make the Japanese political system work better; but if you ask me how to make American teenagers care more about studying and less about showing off their Corvettes, I can only shake my head dumbly. I wish you could take the Japanese public, with its willingness to work hard to improve whatever can be improved, and combine it with American social and political institutions, with their flexibility and openness and decency. Then what a country you'd have!

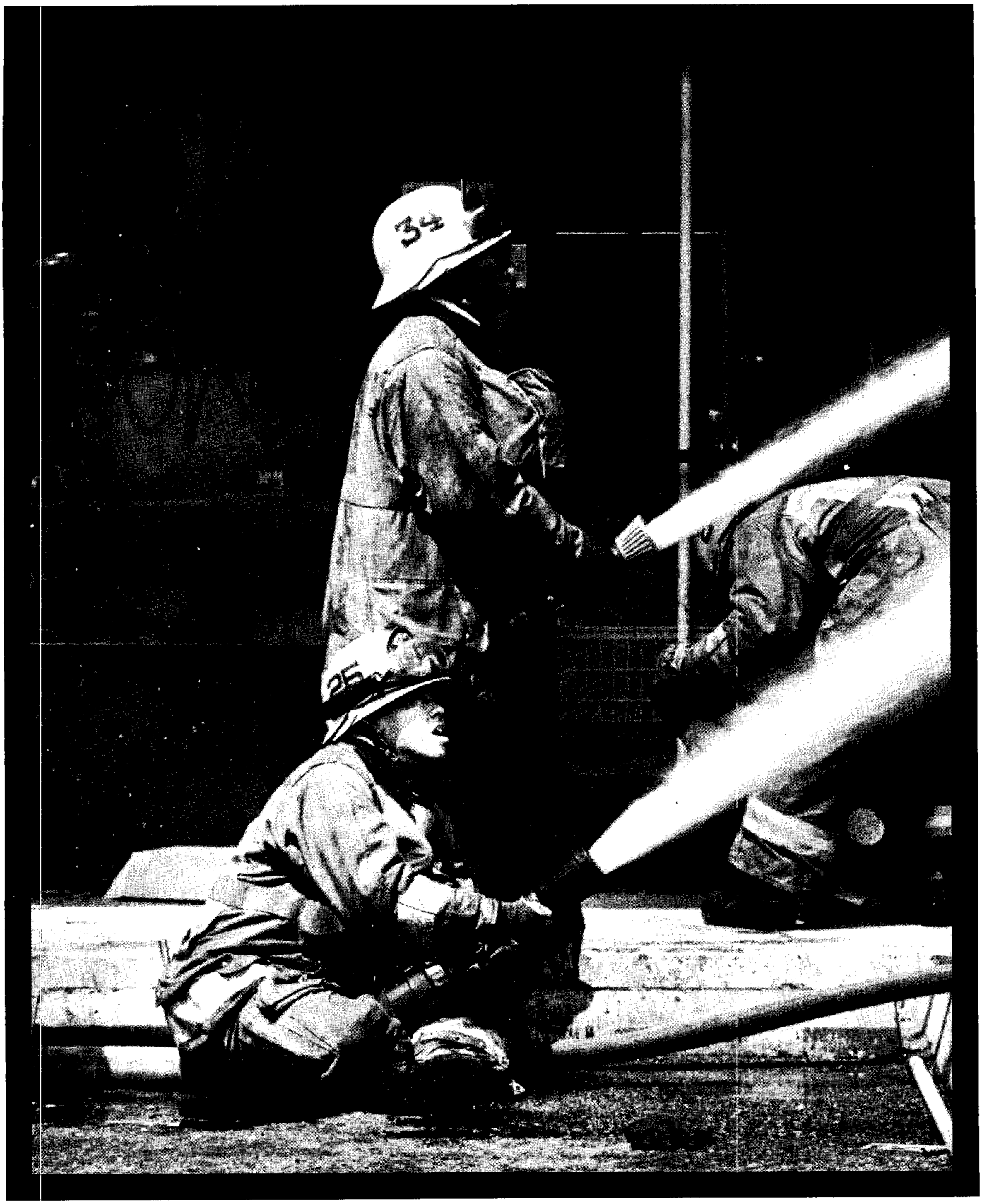
I do wish for that, but it cannot be. We will all have to make do with a poor second-best: We will have to continue to rely on the two countries, by nagging westward across the Pacific and competing eastward, to drag each other bumpily in the right direction. True, the Japanese, like everybody else, hate to be criticized. In fact, they hate it more than most, because they tend to view criticism as a sign of enmity. But the truth is that, for all their protests about Japan "bashing," criticism from abroad is of tremendous benefit to them. Foreign criticism is a useful corrective and an invaluable spur to improvement. It is an intellectual market opener, and a far less dangerous kind of market opener than foreign threats. Now that Japan is too powerful to rely on having foreigners twist her arm, she must learn to rely instead on having them flail her ideas, an altogether healthier kind of *gaiatsu*. Sooner or later, the Japanese must learn to greet outside criticism with welcome rather than with panic—which is one reason why the criticism ought to continue. Eventually they will learn, and we will remember, that criticism is not the same as violence. Then the pernicious talk that equates criticism with "bashing" will simmer down.

And as for the Americans, what is our own best hope? Is there hope that our self-dealing executives and anachronistic unions will rush to reform themselves because it is the smart thing to do? Little or none, as far as I can see. Is there hope that our multitude of special-interest groups—the farm lobby, the business lobby, the affirmative-action lobby, the this lobby and the that lobby—will spontaneously renounce the government pork barrel and shift their energies to self-improvement? Not much. That parents will rise up to demand more homework or longer school years for their children? We Americans may tell ourselves again and again that the slippage in our standards and in our habits must be reversed, that our hands belong on the plow rather than in our neighbors' pockets; the Japanese tell us, too.

But America is too big to be pushed around militarily or, for the most part, diplomatically. The only *gaiatsu* that works on so stubborn and strong a people is steadfast economic competition. We will have it from Japan, and it is our best hope. To Americans, Japan has at last become what America has always been to the Japanese: the unavoidable other, the reality that must be faced, the outnation, the *gaikoku*.

Jonathan Rauch is a contributing editor to National Journal. *This article is adapted from his new book,* The Outnation: A Search for the Soul of Japan, *published by Harvard Business School Press.*

THE RIOTS & AFTER



JONATHON NOUROK

HOME FRONT

Behind the scenes of Operation Garden Plot

BY ROBERT McGLASHAN

When I became an officer in the California Army National Guard, pledging to "defend against all enemies foreign and domestic," I believed that nothing short of World War III would thrust me into combat. After my unit was almost activated during the Gulf War, I realized that we "weekend warriors" were not immune from battle. But never did I imagine that the first battlefield I saw would be the streets of my own city.

When I got the call to report to duty on Friday, May 1, I drove the half hour to the armory in disbelief, thinking what an inconvenience this would be both to my work and to my weekend. But soon these thoughts were replaced by a sense of bravado: "We'll go in, kick some butt, and be back to work on Monday." As in so many wars, that attitude proved a delusion.

When I arrived at the armory in Van Nuys, my first glimpse was of two soldiers outfitted with flak jackets, M-16 rifles, and helmets, checking each car as it passed through the gates. On each side of the gates—which I had never before seen locked—was a makeshift barricade and a field phone so that the gate guards could call the guard station inside in case of trouble.

Never during my time in the Guard, even during Desert Storm when we were on alert against terrorist attacks, had I seen a scene like this. I found myself asking out loud, "What the hell is going on?" To which a soldier replied, "Welcome to Fort Livingroom, sir."

I checked in and received the set of standing orders: No one could leave the armory building without a weapon, flak jacket, gas mask, and helmet. And no one could leave the premises without a pass. Neither order is typical in normal conditions, only in a "tactical" situation—wartime.

Next I received my assignment—to the armory's Tactical Operations Center, or TOC (pronounced "talk"). Not the most glamorous duty, but if you wanted to know what was happening, this was the place to be. From the TOC, we passed missions to the subordinate units to carry out, coordinated details about each mission with local law enforcement, and generally kept tabs on the situation as a whole.

During our normal weekend exercises, we use a situation map, or "sitmap," to plot our position and that of the "enemy." Usually, this is a map of a military reservation with a lot of hills, streams, and other open country. The "enemy positions" are of fictitious Soviet or Chinese units. (Our favorite enemy units are the "Chinese Bicycle Battalions.")

But the sitmap on the wall as I walked into the TOC was of Los Angeles County. Its sectors were distinguished not by streams and hills but by streets and freeways; a different Guard unit was responsible for missions within each sector. This sitmap's "enemy positions" were areas where known or suspected gangs operated. This sitmap was real.

We were under the control of the local law-enforcement agencies, and our missions were dictated by them in detail: the location, the number of soldiers (which we always increased), and the duration of the mission. This detailed civilian management reminded some of the old sergeants—combat veterans—of Vietnam.

To local law enforcement, the gangs were the enemy and our mission was to protect the civilian population (and their shopping facilities) from them. Here, too, the sergeants saw striking similarities between our situation and the Vietnam War: The enemy was "invisible" and could strike from anywhere at anytime, much like the Viet Cong guerrillas. Additionally, you didn't really know who was friend and who was foe; the enemy didn't wear uniforms, so they couldn't be readily picked out from a crowd. I couldn't help noticing that the Vietnam veterans were the most edgy and alert.

The police briefed us on the gangs' methods of operation, the clothing worn by the various gangs, and the hand signs used by the various factions. One item that stuck in my mind was how some gangs conducted drive-by shootings. The report told us that gangs often used two vehicles in a drive-by: the lead car to drive slowly up to the target with its lights out, conduct the shooting, and speed away; and the second car to follow behind the first and peel off in another direction, splitting up anyone who might chase them.

As they came across a police scanner, we plotted all reports of "bad guys" (usually gang members) or "shots fired" (most of these were heard and not seen) on the sitmap. During the curfew, the sitmap filled up at an alarming rate. After a while we became almost numb to the reports of "shots fired," because they were so numerous, and paid a great deal more attention to the reports of "bad guys."

Reports of domestic disputes, while normally not a funny matter, provided comic relief from the tension. One memorable report was of a woman throwing household objects at a man (presumably her husband) from the second story balcony of an apartment building. A policeman radioed the dispatcher that he was going to speak to the woman and try to get her to calm down and stop throwing things. No more than one minute later, the policeman called again to request an ambulance. Apparently, the woman had finally found her mark and belted this man with a ceramic ashtray. He now needed stitches in his forehead.

The police radio was rarely silent, but our military radio was extremely quiet. Field units used the military channels to establish contact upon arriving at a new location or to report that something was going on. Calls over the military radio took the highest priority. If a unit had something going on, and it was important enough to call us, it meant that trouble could erupt and someone could get hurt or killed. If trouble did arise, we had two choices: We could tell the unit to "hang in there" and wait for help. Or we could tell them to leave the area. Every time I heard that radio, I felt an immediate sense of urgency. I felt that if shooting did start and I didn't make the right decision immediately, the consequences could be tragic. I kept thinking to myself, "Do you advise them to pull out or do you tell them to stay on until the cavalry arrives?" I was thinking purely of combat situations, and these were the streets of the town where I live.

SOLDIERS WERE FINDING LEAFLETS IN THE "HOT" AREAS THAT DECLARED THAT L.A.'S STREET GANGS HAD UNITED TO GO AFTER THE COMMON ENEMY, THE LAPD.

We also got information from television, but we took these reports with a grain of salt. One topic really angered us: "Do the Guardsmen have live ammunition?" During the first day or two of our deployment, we heard conflicting reports, with some newscasters saying we did have it and others saying that we didn't. We did. And I believe that had the media put out that information, or said nothing at all, we would have avoided at least one fatal shooting.

In this case, a man ran a roadblock the Guard had established in the Pico-Union neighborhood. He was not fired upon. He must have concluded that we didn't have live ammunition, because he proceeded to run the roadblock a second time and to brandish a weapon. This response brought the Guardsmen's shots that killed him. All the soldiers I spoke to about this incident believed that it was "either him or us."

Often we would receive a report, usually from an anonymous caller, that there was going to be a drive-by shooting at a given location and that they would be targeting the police who were with the Guardsmen. Later these reports changed to include Guardsmen as potential targets. None of these threats materialized. But the Guard was treating this as a wartime situation, so no reports of enemy activity could be discounted.

The media were reporting that the two main gangs in Los Angeles, the Crips and the Bloods, had made peace between one another. Reporters were treating this truce as a wonderful thing—and I wanted that to be the case—but the information we kept getting was telling another story. One report, which I believe originated with the FBI, astonished me. It stated that two African-American men with L.A. addresses and known gang ties had purchased 150 to 200 assault rifles in Louisiana the day before. Meanwhile, soldiers out on patrol were finding leaflets in the "hot" areas that declared that the gangs had united to go after the common enemy, the LAPD. To a soldier in a combat-like frame of mind, this was another form of warfare, psychological warfare aimed at the police.

At times, I felt that it was working, because the civilian agencies wanted very badly for us to stay. On several occasions police officers told us bluntly that they wished we didn't have to go because they feared what the situation might be like if we were to leave soon. The gangs even went so far as to go on the local television news and threaten that when we left they would go after the police. They even came up with an acronym to display their sentiments on walls, flyers, T-shirts, and baseball caps: ACMD, All Cops Must Die.

During the curfew, we had soldiers manning posts for long hours. When they were relieved, they usually wandered back to the TOC to find out what was going on and to relate what they'd seen. All of the returning soldiers had stories of local merchants bringing food or drinks to Guardsmen. Others told of children making drawings to give to the soldiers. We felt that the citizenry of Los Angeles was truly happy to see us.

But not all of the soldiers' stories were so pleasant. One sergeant described a situation where, as he phrased it, "a reconnaissance patrol" of gang members tested the soldiers and came very close to exchanging gunfire. At a heavily looted grocery store in one of the hotter spots in the city, the Guardsmen had set up a perimeter of cones to let people know that no one was permitted in the area.

Six men in a pickup truck drove over the cones very slowly and proceeded toward the store. Directly in their path were two Guardsmen who told them to stop, then shouted this command two more times. Although the pickup's windows were down and passengers were riding in the bed, there was no response. They kept on rolling toward the store and the two soldiers. Thinking that the unit faced a drive-by shooting, the sergeant in charge told the Guardsmen to take up defensive positions. The sentries brought their weapons into a firing position as the rolling truck came within 10 feet of them. The sentry on the driver's side took two steps forward and was within five feet of the rolling truck. He gave the command, "Stop or I will shoot!" Finally, the truck stopped and proceeded out of the area, leaving behind a very tense group of soldiers.

The one theme that ran through all of the soldiers' stories was how devastated certain areas were. The terms "war zone" and "Third World nation" were the most popular descriptions. People who had lived in those areas or passed through them couldn't believe their eyes. "It's like a bad dream" was heard on numerous occasions.

After I had spent so much time in "the rear," curiosity (vs. my better judgment) got the best of me. One morning around two, I grabbed a driver and a vehicle and proceeded down to the hot areas to see for myself and "check on the troops." All of the stories I had heard did not do justice to what I saw. Buildings burned to the ground were common. An appliance store was still smoldering, and we could smell the melted plastic and metal. We passed stores looted beyond recognition. From the "flashpoint" at the corner of Vermont and Normandie, every building we could see had some form of damage.

It pained me to look at these areas and to think of the people who were hurt physically, economically, and emotionally. The people who lived there didn't deserve this. This was their community, their home.

All operations that involve significant military action are named. Examples include Operation Urgent Fury (Panama) and Operations Desert Shield and Desert Storm. A couple of days after my ride into the combat zone, we received a memo that confirmed our feeling that this really was a war, though of a different sort. It explained that this operation, which included active Army units, Marines, and Guardsmen, also had a name: Operation Garden Plot.

Despite all the bad things that happened, I experienced many good things. The outpouring of support from the community to the soldiers on duty was overwhelming. Neighbors helping neighbors was not an uncommon sight. These are the people who will rebuild this city and make it even better than before. This is one thing I firmly believe. ■

Robert McGlashan is circulation director of REASON *and a first lieutenant in the California Army National Guard.*

YOU HAD TO BE THERE

What the networks didn't show the world

BY CHARLES OLIVER

During the days of rioting that followed the verdict in the trial of the police officers who beat Rodney King, I received telephone calls from friends and family in other parts of the country. After first asking if I was safe, they asked what was going on here in Los Angeles. I told them all I knew was what I saw on television—that I didn't know any more than they did. But as the conversations progressed, it quickly became apparent that what I was seeing on local television differed quite a bit from what they were seeing on ABC, NBC, CBS, and CNN.

Repeatedly from them and from callers to talk shows on CNN and C-Span, I heard comments that made it clear that the national networks were playing catch-up, giving viewers reports and analysis that had little to do with what was actually occurring at the time in Los Angeles. On Wednesday and Thursday, after the riots had begun, the networks were still covering the trial, and callers were still ignorant of its particulars—from the makeup of the jury to the arguments of the defense and prosecution.

Once the networks finally turned to the riots themselves, they gave viewers little geographical or historical context. They didn't explain about ethnic relations within Los Angeles, about earlier cases with racial overtones, or about the role gangs play in the everyday violence that marks life in South-Central L.A. The networks' coverage was often overly

simplistic and sometimes out-and-out wrong.

"What were your professional actions in the approval of an all-white jury who may have been culturally biased?"

—Question for Rodney King's attorney, Steve Lerman, from a caller from Baton Rouge, Louisiana, on *Larry King Live*

Rodney King's attorney had no say in the conduct of what networks called "the Rodney King trial"—a criminal prosecution in which King did not even appear as a witness. Larry King reminded his viewers that Lerman "had nothing to do with this trial." Other network representatives were not so fastidious about the facts of the case.

Except for Court TV viewers, most people outside Los Angeles didn't follow the trial. After turning the King beating into a national story, the major networks dropped it. So on Wednesday and Thursday night, as Angelenos were watching their city go up in flames on local television, the networks were trying to explain to viewers in the rest of the country how the four men who beat Rodney King had gotten off.

During that time, I repeatedly heard the jury referred to as "all white" both by national network anchors and reporters and by average people from around the country. The truth is that the jury included one Latino and one Asian. The four blacks in the jury pool were dismissed because their answers to jury questionnaires showed that they seemed to have prejudged the officers and could not render an unbiased decision.

I REPEATEDLY HEARD THE SIMI VALLEY JURY REFERRED TO AS "ALL WHITE" BY NATIONAL NETWORK REPORTERS. IT WASN'T ALL WHITE.

This isn't nitpicking. Having followed the trial on local television, I was surprised by the verdict but not shocked. I had seen the prosecutors try to argue that Rodney King had *never* acted in what could be perceived as a threatening manner on the night of his arrest, a point that even their own witnesses wouldn't back them up on.

The defense managed to focus much of the trial on those initial moments when Rodney King stepped out of the car and seemed to lunge at the officers, rather than that last minute when King was flailing about on the ground as the policemen continued to beat him. Even the two California Highway Patrol officers who testified against the four policemen said that Rodney King's initial actions frightened them.

I had watched as defense attorneys marched the jury through the infamous videotape again and again, arguing that it was impossible to tell if the policemen had deliberately struck King in the head (which would have been a violation of department policy) and that King's attempts to dodge the blows could be interpreted by frightened police officers as aggressive behavior. Yet none of the network reports that I saw mentioned that the law required the jurors to take into account the mental state of the four officers when rendering their verdict.

And most important, I had seen how the defense attorneys played on the tremendous fear that suburbanites of all colors have of crime. The change of venue from Los Angeles to Simi Valley was probably the turning point in the trial. Not because Simi Valley is "all white," as people kept saying, but because it is populated by people of all races who fled the city because of violent crime. Indeed, remarks made by jurors after the trial showed that they were more concerned about not handcuffing the police than about giving justice to Rodney King.

Further, eight of the 12 had served in the military. I didn't hear one network reporter mention this fact. But it's reasonable to assume that people with a military background would be sympathetic to police officers who claimed that they were just following department regulations.

The networks also overlooked the fact that the defense made what was in hindsight a brilliant gamble. It refused to allow the jury to consider lesser charges against the four policemen. They would have to vote on the most serious felony charges. The men and women on that jury might well have found the four guilty of offenses that carried a short sentence, but there was no way they would give eight years of hard time to four members of, in one defense attorney's words, "the thin blue line" that separates law-abiding people from the violence of the big city.

The networks did mention that the defense got lucky when the trial was moved to Simi Valley, but they didn't mention that Oakland had also been under consideration as the venue. While the prosecution had originally argued that if the trial were moved it should be to a venue that resembles Los Angeles demographically (such as Oakland), it did not oppose the decision to move the trial to Simi Valley.

"I think these riots that we've been experiencing the last couple of days might well be called the Willie Horton Memorial Riots, reflecting the ugly racism that was fostered by President Bush's campaign four years ago."

—Erwin Knoll, of *The Progressive* magazine, on the *MacNeil/Lehrer Newshour*

One of the ideas voiced frequently by left-wing pundits is that the beating was motivated simply by racism. If one only saw the videotape of a bunch of white police officers beating a black man, it would be easy to come to the conclusion that the police were racists. And the remarks made over the police radio by defendant Laurence Powell, referring to an earlier case involving blacks as a "gorillas in the mist" situation, certainly raises suspicions about his racial prejudices.

But again, those of us here in Los Angeles saw a more complex picture. Profiles of Stacey Koon, the senior officer on trial, revealed that only a few months before the beating, he had leaped to give mouth-to-mouth resuscitation to a dying "black transvestite prostitute with open sores around his mouth" as other police officers looked on in shock and horror.

Nor do the police limit abuse to black suspects. After the King beating, a commission headed by Warren Christopher investigated police brutality within the LAPD. The commission found the police department regularly treats innocent people with incivility and often abuses them. While blacks and Latinos suffer the brunt of this abuse, whites are treated badly as well. The Operation Rescue protesters who were brutalized by Los Angeles policemen two years ago will testify to that. Even after adjusting for the large size of the city's population, Los Angeles leads all other major U.S. cities in attacks by police dogs and in awards in police-brutality suits.

The problem, the commission found, stems primarily from the police department's unwillingness to investigate and punish its own (the department simply sat on most excessive-force complaints); from the lack of civilian oversight of the department; and from the paramilitary attitude that has been promulgated within the department for several decades.

The LAPD takes the "war on crime" metaphor quite seriously. As other big-city police departments have turned to community-based policing and an increased emphasis on foot patrols, the LAPD has emphasized the swift use of force as a deterrent to crime. The people the department arrests are treated not as potentially innocent persons or citizens with rights; they are the enemy.

PUTTING SIGNS IN THE WINDOWS TELLING PEOPLE THAT SHOPS WERE BLACK OWNED DID NOT SPARE THE OWNERS FROM ARSON AND LOOTINGS.

The national networks barely noticed the release of the Christopher Commission report, and by the time of the riots they seemed to have forgotten about it.

"Increasingly, people are saying that all of the violence had very little to do with Rodney King. Instead, it was the desperate call of a community fighting for change."

—ABC reporter Tom Foreman

The idea that the riots were an unfortunate expression of black America's rage against its mistreatment by white America's political system was voiced by a number of reporters and weekend talk-show pundits. But the pictures from Los Angeles told a different story.

Certainly, blacks were upset with the trial verdict. Only a relative few, however, took part in the looting. Street gangs were the shock troops of the riots. They were the ones who pulled Reginald Denny from the cab of his truck and beat and stomped him. Gang members committed most of the violence and the arson. Their victims were quite often black. Buildings that would have been spared during the more truly political Watts riots of 1965 were attacked. Libraries, the offices of black politicians, and the headquarters of community-action groups all went up in smoke.

And putting signs in the windows telling people that shops were black owned didn't spare the owners. The saddest part of the riot may have been watching black shop owners return to their burned out stores and ask reporters what was going to happen to them and to the people they employed. One wonders whether Ted Koppel had seen these pictures when he didn't challenge a gang member who told him, "We're renovating our neighborhood."

Following the gang members, scavengers moved in to loot the remains of stores. The pictures didn't show anger; they showed people—sometimes whole families—gleefully grabbing "free" goods. And these people weren't all black. About a third of those

arrested were Latino; a substantial number were white.

That's only to be expected. The riots quickly spread out of areas populated by minorities into neighborhoods dominated by whites. And as the riots spread, the participants mirrored the populations of the new neighborhoods.

Part of the problem is that the networks didn't do a very good job of showing people what was happening where on the sprawling L.A. map. Some people I talked to thought the riots were occurring in Watts. Others thought the entire city was ablaze. Neither of those impressions was true.

The networks also didn't do a very good job of explaining the interethnic group violence that occurred during the riot. I'm sure that most Americans understood, or thought they understood, the black-on-white violence that occurred early on. But the black-against-Korean violence must have perplexed most TV viewers.

Here in Los Angeles, however, we are only too aware of the tensions that exist between Korean immigrants and blacks. Many of the shops in black neighborhoods are run by Koreans. Many blacks complain that the Koreans charge too much for the stuff they sell and treat their customers without respect. Some even believe that Koreans get special loans from the government to go into black neighborhoods and start businesses to keep blacks from owning their own businesses.

Koreans, on the other hand, complain of their losses from shoplifters and armed robbery, crimes in which blacks are usually the perpetrators. Several months ago, Korean shop owner Soon Ja Du shot in the back and killed Latasha Harlins, a 14-year-old black girl who had attacked her. Blacks in Los Angeles were outraged when the Korean woman received no jail time for the crime.

So it wasn't surprising when the violence took on an anti-Korean tone. Apparently, the very first business looted was a liquor store targeted because the owners were Korean. And looters soon marched out of South-Central L.A. to Koreatown.

Television reported that Koreans were special targets for violence, but much of the audience was probably left wondering why. And when reporters did try to explore the "Korean angle," they left out inconvenient facts—for example, that many Koreans had purchased or leased their stores from black owners who had moved into more profitable businesses or that 30 percent or more of looted stores were owned by Latinos. On this story, as on so many other aspects of the riot, the networks left viewers with only a partial picture.

What caused the L.A. riots is a question that will be asked for a long time. But we can't figure out the answer unless we know what happened. And for that, Americans will have to depend on something other than national television. ■

Charles Oliver is assistant editor of REASON.

BETTER FED THAN DEAD

Why make police brutality a federal case?

BY DIRK ROGGEVEEN

The video images of Los Angeles police officers beating Rodney King shocked the nation. Americans rarely have an opportunity to view, much less contemplate, the excessive use of state power by the police. Reactions to the officers' acquittal ranged from surprise to visceral anger, from stunned disbelief to the pyrotechnic.

I personally experienced the anger. By chance, I drove through South-Central Los Angeles several hours after the verdict. My car was attacked and badly damaged. Even as I escaped unharmed, I appreciated the irony of my predicament: I had spent the past five years prosecuting police-brutality cases for the Department of Justice. I was as disappointed as any at the jury's verdict.

Despite the department's pending investigation of the Rodney King beating, only after the state acquittal did the press and public become aware that the officers still faced federal prosecution. Some wondered why the Department of Justice hadn't acted sooner. Others, including some libertarians, asked why a federal prosecution did not constitute double jeopardy.

Chicago Tribune columnist Stephen Chapman, for instance, calls the federal prosecution "a trial mounted for political ends." Is this second trial taking place only because, as Chapman argues, George Bush "wants to look responsive to the black community"? Are we retrying the four officers because the jury didn't get it right the first time?

The Constitution indeed protects the LAPD officers from double jeopardy. But the federal government can independently prosecute a police-brutality case, even after an acquittal in a state court, for good reason. Residents of the United States are expected to obey both federal laws and the laws of the state in which they reside; the laws themselves, and the level of punishment meted out for breaking them, can differ.

State and local prosecutors also face pressures and incentives that can make it difficult to conduct a proper trial. And, most important, federal prosecution of criminal civil-rights violations helps ensure that everyone receives the equal protection of the law the Constitution guarantees—especially when that protection is denied by law-enforcement officers, who act as agents of the state.

The Department of Justice had begun its own independent investigation of the Rodney King beating immediately after it occurred. The Federal Bureau of Investigation, the department's investigative arm, had been gathering evidence; prosecutors in the Criminal Section of the Civil Rights Division had been reviewing and evaluating that evidence. Had the state not prosecuted, federal action was inevitable.

Title 18 of the United States Code, Section 242, makes it a crime for any person who acts as an agent of the state intentionally to deprive an inhabitant of the United States of a right secured by the Constitution or any other federal statutory law. This law was enacted in 1866 to enforce the 14th Amendment. Its purpose was to safeguard from abuses of state authority individual rights, including freedom from arrest and detention by unconstitutional methods, prohibitions against extorted confessions, and the right to a fair trial. Since state authorities had widely abused these individual protections, the statute was necessary at the time. It is just as necessary today.

FEDERAL PROSECUTION OF CIVIL-RIGHTS VIOLATIONS HELPS ENSURE THAT EVERYONE RECEIVES THE EQUAL PROTECTION OF THE LAW.

Federal authorities use Section 242 to prosecute law-enforcement officers who use excessive force during an arrest. Under this section, in any given year, police officers are convicted of everything from gratuitously striking to intentionally and wrongfully killing a suspect.

In the case of the LAPD officers, federal prosecutors properly remained on the sidelines until the jury in Simi Valley handed down its verdict. The Department of Justice seeks to preserve limited prosecutorial resources and defers to the principles of federalism whenever states decide to prosecute. Any time an officer is convicted and receives a sentence commensurate with the crime, no federal prosecution will follow. Thus, the Criminal Section can direct its own resources at those crimes which might otherwise go unpunished.

Ideally, local criminal-justice authorities would prosecute all crimes at the state level, including those committed by local police. Yet such prosecutions are often politically risky for local prosecutors, who are, after all, elected officials. The public perceives the police as the "thin blue line" that protects law-abiding citizens from vicious criminals. Any time police officers are prosecuted, critics accuse the prosecutors of coddling criminals.

Additionally, by the very nature of their work, local prosecutors must depend on and work closely with the police. It is hardly surprising that local officials might wish to find any excuse to avoid prosecuting police-brutality cases. If the Department of Justice always prosecuted first, regardless of any state prosecution, it would provide an easy excuse for local authorities to do nothing about police brutality.

When local authorities try but fail to adequately prosecute and punish law-enforcement officers for civil-rights violations, the Department of Justice must then decide whether to pursue a federal case. The department has established guidelines that govern when a federal prosecution may follow a state trial. Before federal prosecutors may seek an indictment, the case must satisfy two conditions: Further prosecution must satisfy an unvindicated federal interest; and the federal prosecution must be likely to succeed.

The outcome of the local trial may determine if there is an unvindicated federal interest. For example, a local jury may vote to acquit on state charges despite overwhelming evidence that federal law was violated. The LAPD acquittals may satisfy this condition.

After an acquittal in state court, federal prosecutors must then determine how likely they are to succeed in a second trial. If the state prosecutors proceeded in good faith before an unbiased trial court that admitted the appropriate evidence, an acquittal may indicate that the jury honestly harbored reasonable doubt. In such instances, it's hard to see what difference it makes whether the case was tried in federal or state court. The guidelines sensibly prohibit a "let's try it and see" approach.

Often, however, peculiarities in a state trial may lead to an acquittal; subsequent federal prosecution would likely result in

conviction. For example, federal jury pools are drawn from federal judicial districts, which are often more ethnically and demographically diverse than state pools. If in a state trial jurors were excluded solely because of their race, retrial by a federal court may be appropriate. Other considerations have included the different rules of evidence in federal trials, additional evidence available to federal prosecutors, and flawed trial tactics or weak prosecutions by local authorities. Any of these factors may enter the Department of Justice's analysis of the Simi Valley verdict.

It is also important to recognize that not all state prosecutions of police officers are conducted competently, legitimately, and in good faith. In 1990, for instance, an elected county prosecutor in Arkansas charged the county sheriff with assault only after it became apparent that, despite local efforts to thwart the investigation, the Department of Justice intended to prosecute him for beating a suspect in his custody. Upon reviewing the trial, federal prosecutors became suspicious of the local prosecution: The prosecutor had not subpoenaed essential witnesses, had ignored entire lines of evidence, and had presented unconvincing arguments for conviction. To no one's surprise, the jury voted to acquit.

In such a case, to argue that "double jeopardy" should prevent the federal government from conducting an independent prosecution is to argue for a system that allows local corruption to successfully thwart justice. It is to argue for a system where an American's constitutional right to be free from the abuse of state authority is secured only by that same authority. The federal jury convicted the Arkansas sheriff and he was sentenced to prison.

Even when the local jury convicts, unvindicated federal interests can remain. State judges often give convicted police officers light sentences. Some of these punishments are legitimate; others aren't. By contrast, federal convictions for civil-rights offenses can lead to prison sentences of many years and fines totaling thousands of dollars. When law officers violate civil rights, probation, suspended sentences, or even minimal jail time may not constitute a sufficient punishment or deterrent.

Not too long ago, a San Juan police officer was convicted of aggravated assault by the Commonwealth of Puerto Rico. He had intentionally beaten an innocent pedestrian who was out for an evening stroll. The pedestrian died from the beating. The presiding judge fined the officer $500, and he was subsequently reinstated. Such a sentence sends a message to other officers that civil-rights violations are not serious offenses, even when those violations lead to the death of an innocent person. The officer was prosecuted in federal court, convicted of a felony, and sentenced to prison.

This example underscores the need for independent federal enforcement of civil-rights laws. The federal government must be able to secure constitutional rights to life and liberty, especially when local authorities fail to do so. Constitutional protections apply equally, whether you're in Louisiana, Los Angeles, or Alaska; these protections certainly include the right to be fairly tried before being subjected to severe punishment by agents of the state. Civil libertarians need to recognize that federal prosecution of law-enforcement officers who use excessive force often provides the only check on such unrestrained state power.

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UNSETTLED TERRITORY

Civil unrest in the new L.A.

BY RAOUL LOWERY CONTRERAS

On the first night of the Los Angeles riots, many buildings burned to the ground because firefighters had no one to protect them from mobs or snipers. An assistant fire chief later recounted how one fire crew was attacked by a gang while fighting a blaze. Rocks and bricks flew and bullets whizzed through the area, pinning the firefighters down. Then, from out of nowhere, came a couple dozen short, dark, Spanish-speaking men carrying machetes.

They formed a skirmish line between the firefighters and their attackers. Slowly and methodically, they walked toward the attackers, swinging their machetes from side to side. The rioters fled. The short, dark men stayed until the crew had put out the fire.

Across Los Angeles in late April and early May, the impulse to destroy was at war with the impulse to preserve. And on both sides of that struggle were representatives of L.A.'s burgeoning Hispanic population. Their story is testimony to the changing face of ethnic America, to the importance of community roots,

and to the hazards of making generalizations about groups as diverse as Hispanics.

This year's chapter in the continuing American saga of race riots marked a turning point: These were America's first multiethnic riots. This time it was not whites against blacks, as in every American race riot before 1942, or blacks against whites as in Watts (1965), Newark (1967), and Detroit (1943 and 1968). This time it was blacks against whites; blacks against Hispanics; blacks against Asians (particularly Koreans); and Hispanics against blacks, whites, Asians, and other Hispanics. Two weeks after the riots, the official body count was 25 blacks, 19 Hispanics, and 10 Anglos.

IN LOS ANGELES, 1.3 MILLION PEOPLE ARE CLASSIFIED AS POOR. BUT 1.3 MILLION PEOPLE DIDN'T RIOT, LOOT, AND BURN.

The Los Angeles of 1992 is a very different city from the Los Angeles of 1965. So, too, were these riots different from the 1965 Watts riots, to which they are often compared. The Watts riots were almost exclusively a black phenomenon, sparked by false rumors that a pregnant black woman had been manhandled and beaten by California Highway Patrol officers and Los Angeles police. Almost all of the three dozen people killed were black.

Looting and arson were mainly contained within the nearly all-black South-Central area of Los Angeles and, specifically, within the neighborhood that gave the riots their name. In essence, black rioters destroyed their own homes and apartments, the stores where they bought their food, and the businesses and factories that provided jobs for the neighborhood. The Watts riots were an exercise in self-flagellation.

The 1992 riots, on the other hand, present a very different picture. In many of the neighborhoods struck by violence, looting, and arson, blacks are a minority or barely a majority. In South-Central L.A., for example, 45 percent of the residents are now classified as Hispanic, 55 percent as black. The breakdown in Watts is similar. In some neighborhoods, the change has been even more dramatic: Eighty-six percent of residents in the Florence area of South-Central L.A. are Hispanic; only 14 percent are black. In Koreatown, where so much destruction occurred, 5 percent of residents are black, 27 percent are Asian, and 68 percent are Hispanic.

Most of Los Angeles's Hispanic residents are of Mexican origin, and many trace their ties to the city as far back as the big wave of immigration between 1910 and 1920. But hundreds of thousands of Salvadoran and Guatemalan refugees have come to L.A. during the last 10 years, swelling the Spanish-speaking population. In addition, hundreds of thousands of illegal Mexican entrants have made their way north since the Immigration Control Act of 1986, which legalized almost 3 million formerly illegal aliens from Mexico. Most of the Salvadorans and Guatemalans came into the United States illegally and settled in L.A. because they could blend in with the native Mexican-American population. These immigrants gravitated toward low-rent areas, flooding previously all-black neighborhoods.

South-Central L.A. became, in less than a decade, a lively, crowded community split almost 50-50 between blacks and Hispanics (mostly immigrant and illegal). The immigrants lived from day to day, working for employers who came to street corners on Pico Boulevard to pick out men willing to work for $30 to $40 a day. Across the street would be black day laborers asking $60 to $80 a day for the same work. Undercut by the immigrants, they usually would not be hired. Resentment grew against the Spanish-speaking foreigners.

The spark that led to the explosion on April 30 was, of course, the not-guilty verdict for the white police officers charged with beating Rodney King. But among the first victims of the violence were a Hispanic family dragged from their car and beaten almost to death by a black mob. Rescued by police, they survived. And Fidel Lopez, a Guatemalan immigrant returning home from work, was beaten and robbed by another group of black assailants. He was saved by Bennie Newton, a black minister, who threw himself between Lopez and the mob and stood over the victim, Bible in hand, until they retreated.

On a videotape shot at the riot's epicenter, the intersection of Florence and Normandie avenues, someone can be heard shouting, "Leave the Mexicans alone." The rioters apparently obeyed this instruction and turned their attention to Korean-owned stores. Many such stores were torched in the South-Central area before anyone thought of going to the heavily Hispanic Koreatown to loot and burn.

During the early hours of the riots, about 6 p.m. until midnight on April 30, the L.A. police did little. Although some

officers disobeyed orders from superiors and confronted rioters, few arrests were made. This fact is critical in understanding the ethnic conflagration that had not yet started. By midnight, the violence against people had died down as the mob turned most of its attention to looting and burning. It was at this point that some Hispanics, mostly illegal immigrants, joined the theft and destruction.

These rioters had been frustrated by decades of death and destruction in El Salvador and Guatemala, by a lifetime of economic and political degradation at the hands of Mexico's oligarchs. Their anger had been compounded by disappointment when they discovered that getting by in the United States was a struggle, contrary to the tales of instant affluence they had heard. They joined disaffected blacks in burning stores and apartments owned by outsiders—wealthy Anglos, long-gone black landlords, and established Mexican-Americans.

Rioters burned and looted as many as 1,000 Hispanic-owned businesses in South-Central and other areas, such as the heavily Central American Pico-Union neighborhood. They did so even when the businesses were painted with the words "Latin Owned" or guarded by Hispanic owners. The mob swept their own businesspeople aside to grab and steal what they could. Later their friends and apologists in myriad refugee centers would blame it all on poverty.

The numbers, however, tell a different story. In Los Angeles, 1.3 million people are classified as poor. But 1.3 million people didn't riot, loot, and burn. Of the 3.3 million Hispanics in Los Angeles County, only 2,764 managed to get themselves arrested for riot-related crimes. Of these, 1,500 were suspected of being in the country illegally. Two weeks after the riots, 700 of these illegals had been deported.

Although the riots were more widespread in 1992 than in 1965, nothing much happened in East L.A., in the San Fernando Valley, or in the San Gabriel Valley. These areas contain the bulk of L.A.'s Hispanic population, and they were quiet. This does not mean that the residents of these neighborhoods have no serious problems: In East L.A., good jobs are in short supply, the poverty rate hovers around 25 percent, high-school dropouts are common, and kids get involved with drugs and gangs.

But the Hispanics in these areas have a strong attachment to Los Angeles. Many blacks and whites who live in L.A. look to cities elsewhere in the country, in the South and East, for their roots. Mexican-Americans are less ambivalent about calling L.A. their home. They have no memories of civil war and government/rebel massacres in faraway countries, but they recognize that many of the world's people are far poorer than they are. And they see no sense in destroying their own home and their own people.

Only one incident of looting occurred in East L.A., at a Sears department store. Shortly after it was looted the culprits returned the stolen merchandise. They did not act out of shame. East L.A. Mexican gangs, which have stronger roots in their community than the Crips or the Bloods have in South-Central L.A., had passed the word: "Not in our neighborhood." ■

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TWICE BURNED

Riot victims may have to fight City Hall.

BY CRAIG M. COLLINS

A few days after the rioting had ended, a *Los Angeles Times* reporter asked Jin Hyuk Chang if he planned to rebuild his liquor store, which rioters had burned to the ground. "It's hard to say right now," he said. "I would like to return, but I don't know if it is safe."

Along with safety, businesspeople like Chang have to worry about inadequate insurance coverage and the difficulty of getting a bank loan in a high-risk area. But those who want to return, and who can find the money to rebuild, will face an even more formidable obstacle: City Hall.

City planners want to take advantage of last spring's destruction. They don't want merely to restore the ravaged, low-income areas of South Los Angeles to pre-riot conditions. They want to make them better than before. In late May, residents of South L.A. got their first indication of what this means: The City Council adopted an ordinance aimed at reducing the number of gun shops, grocery/liquor stores, car-repair shops, and outlets selling second-hand goods.

The council specifically excluded these four categories of commerce from an emergency ordinance designed to slash the red tape that would otherwise hinder the rebuilding of destroyed businesses. For businesses that may have a negative impact on

the neighborhood, the city normally holds public hearings and invites anyone who might be affected to suggest conditions that the business should meet. This process, which can take six months or longer, still applies to the four excluded categories. Many entrepreneurs who saw their businesses go up in flames may never get permission to rebuild.

All other business owners can reopen immediately (even in temporary structures) and operate for up to one year, as long as the city zoning czar determines that their businesses "will not be materially detrimental to the character of development in the immediate neighborhood" and will "contribute in a positive fashion to the reconstruction and recovery." After one year these businesses will need permanent approval.

MANY ENTREPRENEURS WHO SAW THEIR BUSINESSES GO UP IN FLAMES MAY NEVER GET THE CITY'S PERMISSION TO REBUILD.

In the arcane law of vested property rights and zoning, someone who opens a legal business can (speaking very generally) continue it forever—no matter how much neighbors complain, no matter how much the character of the area changes. But once a particular use of the property ends for any reason, the owner can reopen only after complying with current zoning law, including any hearing requirements. Many of the destroyed businesses in South-Central L.A. were created prior to the 1980s, when the city really got aggressive in applying its zoning power. Now the City Council has an opportunity to kill the businesses it doesn't like by imposing expensive requirements—for example, a full-time security guard or lighting in the parking lot.

The City Council apparently does not believe that gun shops "contribute in a positive fashion" to the neighborhood. Business owners who had to fend off rioters without the help of the police would probably disagree. But the attempt to winnow out stores that sell firearms is consistent with the council's general support for gun control.

The City Council's motivation in targeting liquor stores is more complicated. It seems to be a combination of paternalistic concerns about alcohol abuse, ill will toward the Korean-Americans who own many of the stores, and economic ignorance. Community leaders in South-Central L.A., like inner-city leaders throughout the country, often rail against the alcohol trade in their neighborhoods. They complain that beer, wine, and liquor are too readily available. It's true enough that liquor licenses abound: The state Department of Beverage Control estimates there are 728 liquor licenses—more than Rhode Island's total—in roughly 70 square miles of South Los Angeles. That's one liquor outlet for every 686 residents.

As anyone living in Los Angeles knows, however, pure liquor stores are rare. The South-Central landscape is replete with grocery/liquor bodegas, sort of imitation 7-Elevens with tall racks of pint-sized bottles of liquor, hand-painted cardboard signs, single cigarettes selling for 25 cents each in a drinking glass on the counter, and obscure ethnic food (such as dried shark fin) on the shelves along with the Ritz crackers, peanut butter, diapers, and aspirin.

Many of these stores have been around since before the Watts riots in 1965. After the riots, the owners, many of whom were Jewish, sold their stores to blacks. In the '80s, blacks sold the businesses to Koreans.

The Koreans who currently own the stores have an uneasy relationship with their black and Hispanic clientele. Residents feel "gouged" by high prices and resent being watched suspiciously for shoplifting. The Korean storeowners, on the other hand, feel they deserve every penny they make from working 16-hour days. They see themselves as helping the community by providing goods in an area abandoned by everyone else, including the major supermarket chains.

Neighbors complain that the stores attract dangerous-looking degenerates who panhandle until they have enough money to buy single cans of beer. The stores also have become one-stop robbery centers. With the wave of a gun, criminals can get food, booze, and cash—except that storeowners often shoot back. Neighbors worry about the crossfire.

Tension between the black and Korean communities peaked last November, when Korea-born storeowner Soon Ja Du was sentenced to probation and community service for killing Latasha Harlins, a black teenager. The store's security camera showed in grainy black-and-white an altercation between the merchant and the girl, whom she suspected of shoplifting. The girl clearly struck the storeowner but was walking out of the store by the time Soon Ja Du fired her pistol, hitting Harlins in the back of the head.

The light sentence outraged the black community. It cocked

the hammer of racial tension; the Rodney King verdict pulled the trigger. Much of the arson and looting following the King verdict seemed random, but it was clear that Korean businesses were deliberately targeted. Mobs streamed northward along Western Avenue into Koreatown, burning and looting businesses. Korean-owned stores located in South-Central L.A. were also hit hard. As in the biblical story of Passover, black storeowners tried to avoid harm by placing signs in their windows announcing, "Black Owned Business." (One storeowner added earnestly in smaller letters: "I'm pissed too.")

This social context suggests the political pressures that black City Councilwoman Rita Walters may be responding to in supporting the effort to keep liquor stores from reopening. Walters's district encompasses South-Central Los Angeles. The city building department estimates the structural damage caused by the riot in her district amounts to $194 million—more than twice as much damage as any other City Council district suffered. The entire City Council approved the anti–liquor-store measure, but Walters had the most at stake. An unwritten rule of protocol on the City Council is that each member runs his or her own district. The other members agree to cooperate in return for reciprocal favors when their districts are most affected. Walters's support for reducing the number of grocery/liquor stores may in part reflect her constituents' animosity toward Korean merchants.

THE WHOLESALE DESTRUCTION CAUSED BY THE RIOTS GIVES CITY PLANNERS A LEGAL EXCUSE TO WEED OUT "UNDESIRABLE" BUSINESSES.

Certainly many Korean storeowners believe they are being targeted. In May a group of them announced that they plan to challenge the emergency ordinance in court, arguing that it is discriminatory. The perception of anti-Korean bias is confirmed by efforts on the part of community activists to deny it. "It is not a matter of race or ethnicity, it is a matter of greed," the Rev. Frank Higgins, president of the Baptist Ministers Conference of Los Angeles, told a local news service. "They [shop owners] don't do anything for the community with their profits. They just pack up at night and leave the city and leave us with our problems."

If Walters were trying to flush out the Korean storeowners, the ordinance would be a good way to go about it. Business-interruption insurance that would compensate merchants for their lost profits is prohibitively expensive in high-risk areas such as South-Central L.A., as is property insurance. Even if storeowners had the money to rebuild, they would face a delay of six months or longer before they could even begin.

Walters spokesperson Howard Gantman says the South-Central district has a "dire need" for major grocery stores. He notes that major stores in other parts of the city offer larger selections and lower prices. "People in South L.A. are deprived of stores that other people take for granted," Gantman says.

If eliminating small stores in South-Central L.A. is an effort to make the area more attractive to large stores, it's based on curious economic analysis. It's hardly plausible that large stores are avoiding the area because they're afraid of competing with smaller stores that charge higher prices. Departing small stores may be replaced not with major stores but with nothing.

While the targeting of liquor stores and gun shops at least suggests a concern about health and safety, other provisions of the emergency ordinance indicate that the City Council is trying to reshape South-Central Los Angeles in the image of the affluent Westside. The wholesale destruction caused by the riots gives city planners a legal excuse to weed out "undesirable" businesses such as swap meets and auto-repair shops.

"Swap meets have been proliferating in a really amazing way," says Gantman. He doesn't mean it as a tribute to flourishing enterprise in an otherwise bleak economy. He says it the way a doctor might describe the spread of an epidemic.

Swap meets are indoor, ongoing flea markets where merchants sell inexpensive merchandise from folding tables and second-hand clothing from mobile racks. They pose no real threat to the people of South-Central L.A., although they are not welcomed by retail merchants. True, swap meets generally are ugly and slipshod operations. They operate beyond "consumer protection" laws, in true caveat-emptor fashion. Middle-class shoppers may refuse the risks of patronizing this type of business. But poorer shoppers happily endure them to clothe and shoe their children at rock-bottom prices.

Similarly, although hulks of scrap metal surrounded by iron gates and razor wire may offend a city planner's sensibilities, auto-repair shops provide important services to local residents. Getting rid of them will force people to travel farther and pay more to get their cars fixed.

Although the City Council may label them as undesirable,

the very existence of these businesses suggests otherwise. When the council hurts business owners, it also hurts the employees of those businesses. It hurts the landlords of the properties the businesses occupy. It hurts the lenders who have made loans in areas other lenders shun. Most of all, it hurts the customers, whose patronage shows they want these businesses, no matter what the city planners say. ■

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RECONSTRUCTION

The power of imagination

BY VIRGINIA I. POSTREL

Police Chief Daryl Gates spent the first evening of the Los Angeles riots at a political fundraiser in Brentwood. People who honestly want to rebuild L.A. might want to spend some time there, too.

To Angelenos, this advice will sound strange. Brentwood is far from South Los Angeles—in miles and in money. On its fringes, you can buy a plain two-bedroom condo for a shade under $300,000. In its heart, home prices stretch into seven figures. The people of Brentwood are wealthy, and they are mostly white.

There are no factories in Brentwood. Shops, yes; restaurants, yes; banks and hairdressers and gas stations, yes. But no factories or movie studios or big law firms. Brentwood looks like a very upscale version of South L.A. before the riots. It has "no jobs."

And the problem with most plans to help the inner cities is that they can't explain why Brentwood isn't poor. From Jack Kemp's enterprise zones, to separatist schemes to "recycle black dollars," to socialist dreams of city-owned rail-car factories, these plans all share a single premise: that the way to make neighborhoods prosper is to put businesses in them.

This vision sounds great. Self-reliance is, after all, a respected virtue in America—and a stark contrast to welfare dependency. Entrepreneurship is inspiring. Ethnic solidarity has provided capital, labor, and upward mobility for countless immigrants. Community self-help has a nice ring.

But with or without investment from the outside, these plans all assume one thing. They assume that South Central will remain a ghetto.

And in a free society, economically thriving ghettos just aren't stable. If new enterprise does spring up in South-Central L.A., if neighborhood entrepreneurs start making big bucks and neighborhood workers steady wages, one of two things will happen. Most likely, the newly affluent and the newly middle class will do what their counterparts elsewhere have done. They will get the hell out of South Central. They will use their money to buy safety for their families, and they will commute. Eventually, they will find jobs closer to their new homes. And South Central will remain "the inner city."

But suppose that doesn't happen. Suppose well-to-do residents decide to stay. Suppose they clean up the neighborhood, invest in it, improve it. Suppose by dint of community spirit, political pressure, and hard work, they manage to make South Central once again safe and prosperous. Their investment will pay off. Property values will go up. They will attract more people like themselves. And the neighborhood will gentrify. It will no longer be "the inner city." It will become expensive. And the people who made it a poor neighborhood, the desirable and the undesirable alike, will have to go elsewhere.

The truth is, poor neighborhoods aren't poor because the neighborhoods don't have jobs. They are poor because the people who live in them don't have jobs. The problem of the inner cities is not a problem of place. It is a problem of people.

On one level, that makes it an easier problem to solve. South Central is a risky place to put a business; even without company-destroying riots, crime defines the inner city. It's hard to overcome the threat of bullets with the promise of tax breaks. It should be simpler to bring the people to the jobs than the jobs to the people. After all, all over the world, poor people travel vast distances in search of work. From Los Angeles alone millions of dollars flow back to Latin America and Asia, retracing the journeys of those who earned them.

But the policy makers concocting ways to "save our cities" ignore this pattern. In Los Angeles, neither Anglo social planners nor black community leaders seem able to imagine how a native-born Angeleno—the child or grandchild of people who crossed the continent to find better work—could take the bus to a job across town. In this city of commuters, no one can imagine a commute from South Central.

This failure of imagination has several sources. One is the

habit of mind created by a community dependent on, and insulated by, government checks. On May 1, the Friday of the riots, hundreds of people stood for hours to collect welfare and social-security checks at post offices patrolled by National Guardsmen. In the inner city of Los Angeles, in the inner cities of America, the money comes in; the people don't go out.

Then, there is the current devastation. To be good places to live, neighborhoods do need shops and restaurants and banks and hairdressers and gas stations—the kinds of retail outlets that were sacked by looters and consumed by flames. Insurance companies expect to pay more than $775 million for riot damage, but some business owners say they'll take the money and flee. And with so many businesses gone, it's natural to think about replacing those that won't return.

But such retailers are important not because they provide jobs but because they provide services. They are a convenience to residents, not a path to economic salvation.

What really distinguishes South Central from Brentwood (or from less affluent neighborhoods such as Hollywood) isn't a lack of jobs. It is social isolation, isolation so profound that those who speak for the inner cities assume it will continue forever. In a city that exports imagination to the world, no one can imagine how a young man from South Central might find work on a calmer side of town. No one can imagine hiring him. He cannot imagine it either. He lives in one world. Employers live in another. Jobs must come to South Central because no one can imagine it any other way.

THE PROBLEM OF THE INNER CITIES IS NOT A PROBLEM OF PLACE. IT IS A PROBLEM OF PEOPLE.

We will not overcome that isolation with a jobs program from Washington. Such programs exist so that local politicians can dole out opportunity locally. Such programs do not widen horizons. They keep things in the district. And while they may provide work experience, they do not teach people how to find real jobs, jobs that involve no political connections.

Indeed, the whole focus on federal programs is destructive. It is unjust to loot the people of Cleveland and Tampa and Santa Fe to rebuild L.A., a city whose reconstruction offers them no conceivable benefit. But it is more than unjust; it is dangerous.

The obvious danger lies in the already apparent backlash—against Los Angeles, against cities, against blacks, against immigrants, even against Rodney King. It is a backlash that for the most part still confines itself to talk-show call-ins and irate letters to the editor. But it will eventually take political form, and it will not resemble anything as benign as a tax revolt.

There are also more-subtle perils. Some critics have charged that passing a huge aid package rewards rioting, encouraging more of it. This would be true if the aid were going to the rioters, but little of it will reach them directly. Aid does send the wrong message to rioters, but it is not that message.

Rather, aid tells rioters—and the rest of America—that wealth is something to be snatched, to be taken and to be taken lightly. In the unreal world of Washington, billions can be had at the stroke of a pen; adding zeros is a measure of sincerity. Money comes from nowhere and no one. It's nothing personal.

Especially now, we need to send, and to hear, quite the opposite message: that wealth is an embodiment of work, that property is an extension of self, that burning someone's store is a personal attack, an attack no less meaningful than a physical beating. People who believe that property comes free of time and toil—whether they are tax-fed denizens of Congress, the decadent heirs of the rich, or the welfare-supported children of the poor—cannot appreciate what happened in Los Angeles and cannot begin to repair the damage.

For months after Hurricane Hugo struck the South Carolina coast, my family's friend Bob would pack his tools in his car and make weekly trips across the state to the rural enclaves that had been forgotten by the TV cameras, the Red Cross, and the federal government. Along with several friends, he would rebuild and repair the homes of people too poor and often too old to fix things for themselves. He did it, I think, because he felt a connection to these strangers—and because he knew that if he didn't do it, it wouldn't get done.

It was people like Bob who rebuilt South Carolina after Hugo. And it is people like Bob who hit the streets of Los Angeles with brooms and shovels in the weekend following the riots. In a notoriously fragmented city, people from riot-torn neighborhoods worked alongside people from as far away as Riverside County. For a fleeting moment, the people of the inner city were not isolated from the rest of town.

As he shoveled ashes into my garbage bag, a young black man from the Westside commented to me what a revelation the cleanup had been. To see what thriving businesses the area had supported just days before, he said, "blows the lid off" the idea that this neighborhood was some kind of foreign country. How ironic, he thought, that we would never have come there under ordinary circumstances. We were in Pico-Union, not beseiged South Central, but he had a point.

Federal aid tells Angelenos that they need no longer concern themselves with reclaiming their city. They've given at the office. Federal aid tells Angelenos that healing their city is none of their business. As Rep. Vic Fazio put it, "The money we provide today will restore the face of Los Angeles but it is now up to Congress and the White House to heal its heart."

By taking the trouble out of things, by giving people reason to think that "if I don't do it, it will get done," federal aid breaks the bonds of community. That, indeed, is part of the point. Aid frees the affluent from worrying about the other side of town. And it permits the inner city to avoid earnest outsiders. Ultimately, it strengthens the walls of the ghetto.

On the left, in fact, it has become quite fashionable to denigrate the cleanup efforts and the spirit behind them, to mock those who suggest that the better angels of our nature have anything to contribute to the future of our city. The ubiquitous Marxist commentator Mike Davis refers to such notions as the "smog bank of sanctimonious rhetoric obscuring our view." (Davis wants $3.7 billion for gangster-administered "social investment.")

Upholding the virtue of community efforts, it seems, detracts from the revolutionary struggle, from the glamour of gang-bangers, from the hate-filled politics of Rep. Maxine Waters. It suggests that private action is important and that we can—and should—live without killing each other. It is too damn judgmental and too damn hopeful.

But the only way to repair Los Angeles, beyond the expensive but superficial job of replacing burned-out buildings, is to break the isolation of the inner city, to bring imagination to South Central. If that happens, jobs will follow—there or elsewhere.

This is a daunting task. It requires, first of all, a concerted effort to make the streets safe—at least as safe as Hollywood, where no car radio is secure but tourists rarely end up dead. As I've suggested elsewhere ("Rage, Riots, & Respect," July), citizen patrols could offer a valuable and affordable supplement to community-based policing.

Obviously, public safety would improve the chances of bringing outsiders in. But it would also liberate insiders. When the known world is threatening, the unknown is unthinkable. If you can get shot crossing the street, crossing town becomes too risky to contemplate.

Then, there is transportation. Contrary to popular belief, Los Angeles has lots of public transportation—an extensive bus system. It's just that most people would rather drive. Buses are inconvenient, especially over long distances.

Jitneys, small privately owned cars or vans, would be better. They could offer fewer stops, less waiting, and more-flexible routes. They could also provide economic mobility—opportunities for easy-entry entrepreneurship or employment. Entrenched interests, notably the taxi companies and the much-reviled Rapid Transit District, don't like the idea of competition. But surely the lives of inner-city residents count for more than the maintenance of a government bus monopoly. If South Africa can let black entrepreneurs make it big in the jitney business, so can L.A.

In his touchstone book about life in a Chicago housing project, *There Are No Children Here*, Alex Kotlowitz recounts one undilutedly joyous adventure: a family trip to see the store windows of downtown at Christmas time. The children have never been downtown, have never seen skyscrapers, even though they live only miles away. Their mother buys them popcorn, and they have a wonderful time. Pat Conroy tells a similar story in *The Water Is Wide*, only the kids are from a rural island off the coast of South Carolina. Poor people, urban or rural, tend to be provincial. Their worlds are small.

If you live in a small world, it is hard to answer one of the most important questions of all: What do you want to be when you grow up? It's a multiple-choice question, but to see the choices you have to see the world. You have to meet people—in person or in books or on television. You have to find out how to get from here to where you want to be.

Field trips and speakers and programs and books that break the children of America's ghettos out of their isolation are worth more to the future than all the shiny hotels and office buildings Urban Development Action Grants ever built. (And, let's face it, such real-estate subsidies are what "aid to the cities" is all about.) Horizon-expanding encounters aren't expensive, but they require something rare and precious: Somebody has to risk being a stranger in a strange place. Somebody has to cross town.

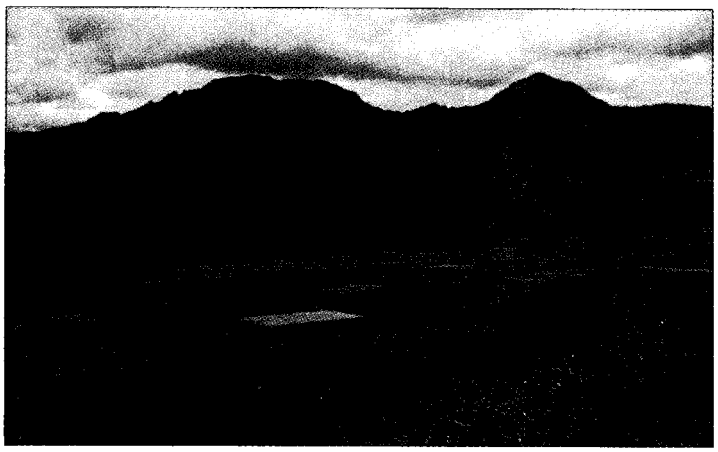
And that brings us to the heart of the matter. Beyond safety, beyond transportation, beyond field trips, or school choice, or loan pools, or a host of other practical ideas, lies the vague, intangible task of restoring trust, creating empathy, connecting the people of Los Angeles to one another. This is not a collective endeavor. It cannot be accomplished with symbols. The only way for people to learn to see each other as individuals is to see each other as individuals, one by one by one. And that is where the repairs must begin. ◼

Virginia I. Postrel is the editor of REASON.

TROUBLE IN PARADISE

BY RICHARD MINITER

Standing amid a herd of foraging bison, not far from picturesque white beaches and tall palms swaying in the ocean breeze, Marty Mowry has had enough. "A number of years back I had my diamond ring pulled off my finger by a robber. And I'm saying today that this process is not different from that; it's just plain theft," she says.



Kauai's Hanalei Valley: Farmers kept it biologically diverse. Now "landmark" zoning is forbidding farms.

Marty and Bill Mowry have operated Hanalei Garden Farms, a 300-acre bison ranch, on the Hawaiian island of Kauai for more than a dozen years. But there is trouble in paradise.

"We have written proof showing the federal, state, and county authorities are working together to steal our property rights, triggered by the NNLP," says Bill Mowry.

The NNLP that Mowry refers to is the National Natural Landmark Program, administered by the U.S. Park Service in faraway Washington, D.C. Begun in 1962, the program was designed to recognize areas of great natural significance; it's the environmental counterpart to the National Historic Landmark Program. Across the country there are 590 National Natural Landmarks, but the program is under fire, and only three new sites have been designated since November 1989.

Since 1981 the Park Service has been required to notify landowners that their property is about to be listed as a landmark. But it doesn't always work out that way. Bill Mowry charges that the Park Service deliberately avoids notifying property owners that their land is under consideration as a landmark until it's too late for them to object.

"We haven't been a voluntary participant in the program at all," insists Mowry. Voluntary or not, the Park Service can list property over the objections of its owner. Mowry maintains he learned about the NNLP listing after the fact and "by accident," when he received a letter from the local zoning board.

Once a piece of property is listed as a natural landmark, a set of silent bureaucratic gears are set in motion. Although the NNLP status carries no restrictions, since the early 1970s local zoning boards have used the NNLP listing as a basis for restricting development—an action that lowers property values. "It's an indicator to the state, I believe, to go ahead with their program, which is to down-zone our agricultural property to conservation," Mowry says. "We can't operate the ranch if we're down-zoned to conservation." He believes the state could not justify the zoning change without the federal listing.

"He's operating in the red, and this will probably put him under," says Terry Moeller, a part-time worker for Mowry.

Faced with growing criticism from property owners, the Park Service has hired a contractor to ensure that all property owners are properly notified. Yet that will do little to help landowners remove landmark status or reverse local zoning decisions.

And that's not the only flaw in the program. After listing the obvious sites, such as the privately owned Great Meteor Crater in Arizona, the Park Service began hiring consultants to recommend lands for listing. Some of these consultants may have trespassed on private lands in order to list them as landmarks. Though he denied he knew of a specific case of abuse, Duncan Morrow, a spokesman for the Park Service, admitted: "The [Park Service's] records are too chaotic to certify that there hasn't been abuse of people's property rights."

Other members of the Interior Department are less hesitant to castigate the program. "Over 2,800 private landowners may have had their property rights seriously infringed upon," concluded the Interior Department's Inspector General in a recent report on the NNLP.

But that offers cold comfort for the Mowrys, who are just two of hundreds of Hawaiians who could lose their land in the name of environmental protection. The state already owns more than 195,000 acres in the Hanalei Valley on Kauai, the penultimate island in the Hawaiian chain. Yet the state covets the remaining 48,000 acres held in private hands.

One landowner, who has to cross state land to reach his home, received a panicked call from his wife. She said government workers were destroying the bridges that enable them to reach their property. He is now in court, fighting for the right to return to his home.

This scenario is part of a larger drama being played out on a national stage. In Culpepper County, Virginia, federal-landmark listing keeps Wayne Lenn, a retired farmer, from selling off part of his holdings in order to support himself in old age. "Historically, the farmer always has to sell the farm when he retires, because that is his retirement," Lenn says. "So if we're going to stay on the farm, we should have been allowed the chance to recover part of our equity."

He clearly thinks little of the civil servants barring him from selling part of his property. "I never knew what it was like to want to get a gun," he says bitterly.

The U.S. Park Service's National Natural Landmark Program is a thin justification for taking private property without compensation. "If government officials want to make museums out of private property, they should either buy the land or pay the owners exorbitant salaries as curators," says Ike Sugg, Walker Fellow in Environmental Studies at the Competitive Enterprise Institute.

Governments rarely can claim to be better stewards of the land than individual owners. Certainly state land in the Hanalei Valley is no environmental showcase. So-called California grass, an imported weed that can grow as high as 10 feet and choke out native wildlife, runs riot over the public lands. The result has been a catastrophe for the endangered species that inhabit the Hanalei Valley. State officials, by allowing nature to take its course, also permitted the Hou tree, which "can grow a trunk as thick as a man's leg, to take over and suffocate the area," says Moeller.

In contrast, private lands are more biologically diverse and better maintained. "The reason the Hanalei Valley is inhabitable is due to the farmers," says Moeller.

Park Service records are too chaotic to certify there haven't been abuses of people's property rights, admits one official.

On the American mainland, public lands are in no better shape. At Yellowstone National Park, officials have been unable to control the overpopulation of elk and bison, which are crowding out beaver, mule deer, and bighorn sheep. The Bureau of Land Management has allowed feral horses to overgraze public lands. The Bureau of Reclamation, Dam and Canal Building has disrupted fragile ecosystems, while the U.S. Forest Service subsidizes timber cutting where it doesn't make economic sense. Federal subsidies divert water to make deserts bloom into cropland, which devastates upstream fish populations. And farm subsidies encourage overfarming, which makes it harder for wildlife to survive.

Despite this long record of ecological mismanagement, state and federal officials continue to insist on the right to take private property—in the name of environmental protection.

The U.S. Park Service concedes it has been the target of criticism but counters that revised regulations will soon address landowners' concerns. "I won't hold my breath," says one Hanalei Valley resident.

Richard Miniter, currently at the Cato Institute, writes often on environmental issues.

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ALL IN THE FAMILY

BY MARTIN MORSE WOOSTER

Dan Quayle was widely ridiculed last spring for depicting Murphy Brown as a bad model for inner-city teenagers. But even his liberal critics took the theme of family disintegration seriously. The brouhaha that followed the vice president's remarks revealed that discussion of family issues must go beyond questions of day care and tax deductions. At its heart, the debate is about what government can do to change behavior.

Before discussing how the lives of families should be improved, let us see whether a problem exists. Are America's children living better or poorer lives than in past decades? The best summary of the evidence is provided by Stanford economist Victor R. Fuchs and National Bureau of Economic Research associate Diane M. Reklis in the January 3 *Science*.

Between 1960 and 1990, the number of American children remained constant at about 64 million, while the number of Americans aged 18 to 64 rose from 100 million to 152 million. The children received a steadily rising amount of tax dollars: Measured in constant 1988 dollars, children received $83.1 billion (or $1,289 for each child) in federal, state, and local government funds in 1960. By 1988, Fuchs and Reklis calculate, this aid rose to $188.1 billion in constant dollars, or $2,946 per child. (Spending for adults rose much faster, thanks to the introduction of Medicare and Medicaid in 1965.)

While more government funds flowed to children (largely through schools) and more adults were able to look after the kids, children's lives, by many measures, changed dramatically. The child of 1990 was far less likely to live in a traditional two-parent household in which the mother stayed home. In 1960, only 18.6 percent of married American women with children under age 6 worked; by 1988, this figure had risen to 57.1 percent.

The likelihood that a child would be illegitimate or live in a single-parent home also increased. Single-parent households rose from 5.5 percent of all families in 1960 to 14.2 percent in 1988. In 1960, 5.3 percent of U.S. births were to unwed mothers; in 1988, 25.7 percent were. Children were also more likely to commit violence against themselves or each other. The suicide rate for youth aged 15 to 19 tripled between 1960 and 1990; the homicide rate nearly tripled.

Some additional data can be found in the February *American Demographics*, a special issue devoted to young people. James U. McNeal, a marketing professor at Texas A&M University, finds that American children under age 13 earned $9 billion in 1989 from allowances and doing chores but successfully convinced their parents to buy $132 billion worth of goods and services in that year, "a vast sum, more than the Gross National Product of Taiwan." According to McNeal, America's kids in 1989 persuaded their parents to spend $22.8 billion on fast foods and $14 billion on soda, but only $2.6 billion on fresh fruits and vegetables.

So America's young people are, in many ways, more pampered than in the past. On average, they have more money to spend, have more money spent on them, and get more tax dollars than their parents did at a comparable age. But the problems children now have are more moral than economic. Whatever causes children to commit suicide or be killed, it is not that these children are deprived of life's essentials.

And because the problems of America's children are largely moral and ethical rather than economic, issues of learning right and wrong rather than being able to afford food or clothing, there has been a subtle shift among some of America's best and brightest social-policy analysts. In the last few years, a new group has emerged, known as either "communitarians" or "neotraditionalists." These thinkers are for 1992 what the neoconservatives were in 1966 or 1967: scholars who have begun to question traditional liberal wisdom but have not yet abandoned it.

Certainly the communitarians are big fishes in the small pond of American social-policy thinkers. They have their journals: *The Responsive Community*, a quarterly, and *New Oxford Review*, an unpredictable Catholic monthly. They also are regularly published by the Pro-

gressive Policy Institute, a centrist Democratic think tank; some of them have influence on leading Democrats, most notably Bill Clinton. (But as Garry Wills notes in a recent *New York Review of Books*, the communitarian influence on Clinton will probably be slight, since Hillary Clinton, in several published papers, has shown that she advocates the orthodox liberal position on children: Spend as much on welfare as possible.)

Communitarians tend to favor traditional morality and Old Left economics. There is little evidence that they want women to leave the office for the kitchen, and they do not automatically see government as the answer to every social problem. But most of them tend toward socialism and social conservatism.

"An appreciation of authority, patriotism, self-discipline, personal accountability, high standards of workmanship, marital stability, and two-parent families," historian Christopher Lasch observes in the October 1991 *New Oxford Review*, "does not imply enthusiasm for the free market, itself one of the main sources of our false conceptions of personal liberalism and unlimited choice."

But while communitarians believe that children should become more moral, they are divided on the question of whether traditional welfare programs will help them achieve their goal. In the December 2, 1991, *New Republic*, University of Maryland philosopher William Galston calls for a "neoprogressive" agenda of aid to children. He supports raising the personal exemption from $2,050 to $7,000, with extra tax credits for parents with very young children. And while he favors spending on some government programs (particularly Head Start) and supports tougher enforcement of child-support payments, Galston believes that parental choice is crucial in government-aid programs for child care. Democratic reformers, says Galston, "are looking for new forms of non-bureaucratic, choice-based public activism as a supplement to the frequently cumbersome and intrusive institutions of the welfare state."

This split among communitarians (nearly all of whom are Democrats) is part of a broader split in the Democratic Party on issues affecting children. Many older Democrats favor traditional regulatory command-and-control approaches for children; the younger ones prefer more flexibility, allying themselves with advocates of "entrepreneurial government."

The split has roots in the failure of the Great Society. In the 1960s, the social-worker organizations scored victory after victory by convincing politicians that the family could be saved by increases in government spending. Families were not redeemed by the Great Society; by many measures they became much worse. One of the major reasons the United States does not have European-style child allowances or federally subsidized day care is that advocates of increased spending could not persuade politicians that their calls for tough licensing of day-care workers were anything more than the traditional union tactic of mandating high wages through unnecessary restrictions on entry into the labor force.

Many of the old ways of dealing with the family are still valid. A parent who teaches firm moral principles does a better job of raising a child than a bureaucrat administering a regulation. An increase in the personal exemption large enough to provide a truly flexible market in child care (in which a mother looking after a few additional kids could compete on a level playing field with day-care workers) does a better job of aiding parents than restrictions and licensing.

When government tries to be a universal parent, the result frequently is an oppressive society. The philosophies of the socialist nanny state of Sweden and the fascist warrior state of Nazi Germany resulted partially from deluded politicians believing that they were better able to instill values in the young than parents or religious leaders.

Contributing Editor Martin Morse Wooster is a writer, editor, and researcher living in Silver Spring, Maryland.

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RISKY BUSINESS

BY JONATHAN MARSHALL

Government agencies that write health and safety regulations are a little like those that build dams, argues Duke University economist W. Kip Viscusi. In the early years, they tackle the obvious, high-payback jobs for which they were created. But as those tasks are completed, the bureaucracies refuse to die. Instead, they invent ever more ingenious excuses to stay in business, whether by building dams in ever more dubious places or by regulating ever more trivial hazards.

For dams, at least, everyone agrees on the merits of weighing economic costs and benefits, even if pork-barrel politics all too often make calculations of feasibility irrelevant. But in the case of health and safety regulations, the very thought of benefit-cost analysis strikes environmental and labor activists—not to mention Congress—as a crass attempt to reduce human lives to dollars. Indeed, many laws explicitly bar federal agencies from considering cost issues when setting health standards.

That state of affairs suits proregulatory activists just fine. They can use moral appeals to demand more government controls on industry and commerce, avoiding intellectual challenges from economists and risk analysts.

All of which explains the furor that has greeted a dramatically new line of attack from the White House on regulatory excess: so-called risk-risk, or life-life, analysis. Championed by a small contingent of regulatory overseers at the Office of Management and Budget, risk-risk analysis posits startlingly that some regulations intended to save lives may actually put the public in danger. If so, the moral high ground shifts to those who question onerous new controls on industry.

OMB first delivered this bombshell on March 10 in a letter to the Occupational Safety and Health Administration, asking it to reconsider a proposed regulation extending air-contaminant standards to the agricultural, maritime, and construction industries. OMB's argument, which took OSHA by surprise, was that such costly regulations could threaten public health indirectly by reducing the public's wealth and income, ultimately killing more people than they would save.

THE COST OF REGULATION

Regulation of...	saves...	at a cost per life of...
Grain Dust	4.00 lives/yr.	$5.3 million*
Uranium Mines	1.10 lives/yr.	6.9 million
Benzene	3.80 lives/yr.	17.1 million
Glass Plant	0.11 life/yr.	19.2 million
Ethylene Oxide	2.80 lives/yr.	25.6 million
Copper Smelter	0.06 life/yr.	26.5 million
Uranium mill tailings, active	2.10 lives/yr.	53 million
Low-arsenic copper	0.09 life/yr.	764 million
Land Disposal	2.52 lives/yr.	3,500 million
Formaldehyde	0.01 life/yr.	72,000 million

*in 1984 dollars

Source: W. Kip Viscusi, *Fatal Tradeoffs: Public and Private Responsibilities for Risk*

Leaked to the media, this novel argument did not fare well. "They got really beaten up on the Hill, and got a well-deserved black eye in the press," observes David Vladeck, an attorney with Public Citizen in Washington, D.C. A congressional staffer speaks scathingly of the "little pointy-headed guys" in OMB who dreamed up this "cockeyed" analysis. Twelve Democratic senators, led by Howard Metzenbaum and Edward Kennedy, wrote President Bush on March 19 to protest this "dangerous" and "cruelly insensitive" OMB action.

Yet for all the bluster, OMB's theory—though needing further research and refinement—rests on highly plausible foundations.

There are, after all, numerous ways in which health and safety regulations can, quite unintentionally, backfire against the public. An overcautious Food and Drug Administration has killed people by delaying the introduction of new pharmaceuticals. Pesticide bans may drive up the cost of fruits and vegetables, worsening diets and thus health for the poor. Expensive airline-safety programs may inflate ticket prices, prompting people to take to the road, where risks are much greater.

The mechanism suggested by OMB is more subtle, based on the observation that, as the University of California's Aaron Wildavsky puts it, "wealthier is healthier" and "poorer is riskier."

Even casual examination establishes the fact that affluent people tend to live longer than poor ones. After scientifically demonstrating this correlation years ago in a study published in the *American Economic Review*, Irma Adelman noted, "It stands to reason that such factors as better nutrition, improved housing, healthier and more humane working conditions, and a somewhat more secure and less careworn mode of life, all of which accompany economic growth, must contribute to improvements in life expectancy."

With more money, people can see their

doctor more often, buy safer cars, afford home-safety investments, move to a safer location, get a better education, and improve their physical and mental health in a host of other ways. Putting these general observations to work, Ralph Keeney, a professor of systems science at the University of Southern California, has tried to quantify the relationship between regulatory costs, which reduce personal wealth and income, and mortality. Using mortality and socioeconomic data gathered by other researchers, Keeney calculated that every $7.25 million in regulatory costs could plausibly cost one life.

That death is "statistical"—no one can ever single out who dies prematurely from income or wealth losses any more than anyone can ever identify for sure who dies from carcinogens in the environment. But the lives lost are real nonetheless.

Keeney's work wins theoretical support from a new, as yet unpublished, study by John Graham, head of the Center for Risk Analysis at Harvard, and two colleagues. They find a strong statistical link between long-term income trends and health. Graham notes that many regulatory costs, and therefore health effects, fall most heavily on the poor.

"We should be particularly concerned about whether the low-income and minority population ends up bearing a disproportionate share of the risk," he says. "If they do, it is very likely that we are killing more people than we are saving."

If Keeney's threshhold number—which he stresses was based on several assumptions and is therefore "for illustrative purposes only"—is anywhere close to the mark, regulations are indeed killing a lot of people. The Environmental Protection Agency estimates that the United States spent about $115 billion in 1990 on pollution controls, a number that is expected to rise to $185 billion (in 1990 dollars) by the turn of the century.

These are not trivial sums; indeed, they are more than the gross domestic product of many nations. No doubt such spending buys significant public-health and other benefits. Yet as the EPA admitted in 1990, "there has been little correlation between the relative resources dedicated to different environmental problems and the relative risks posed by those problems." In other words, the American people are not getting as much bang for the buck as they could.

Are they at least getting enough bang to save more lives than the regulations may cost? In many cases, almost certainly. But as OMB's John Morrall III noted in a 1986 journal article, federal agencies have proposed regulations which, by their own calculations, would cost as much as $72 billion per life saved. His representative list of regulations included no fewer than 9 final rules costing more than $25 million per life saved. Even if Keeney's model is off by a factor of three, these regulations are deadly indeed.

Proponents of specific regulations—including the OSHA standards that OMB questioned in March—argue that industry often inflates cost estimates of new mandates and underestimates the benefits. That may well be; even some skeptical risk analysts say that OSHA regulations on cotton dust and vinyl chloride cost less than expected and produced productivity gains along with health improvements.

But the point of risk-risk analysis is not to defeat all regulation. Rather it is to force regulators to acknowledge explicitly the trade-offs inherent in their rules. Risk-risk analysis sets a new standard for empirical investigation of the merits of ever more expensive government intrusions into the market.

The concept is winning cautious endorsement from some of the nation's top regulatory experts. While calling for further research on the exact relationship between cost and illness, Paul Portney, acting head of the Center for Risk Analysis at Resources for the Future, says, "OMB is right to begin to make regulatory agencies appreciate the fact that unnecessary or unnecessarily expensive regulation is not just costly to business, but takes a human toll."

Jonathan Marshall is economics editor of the San Francisco Chronicle.

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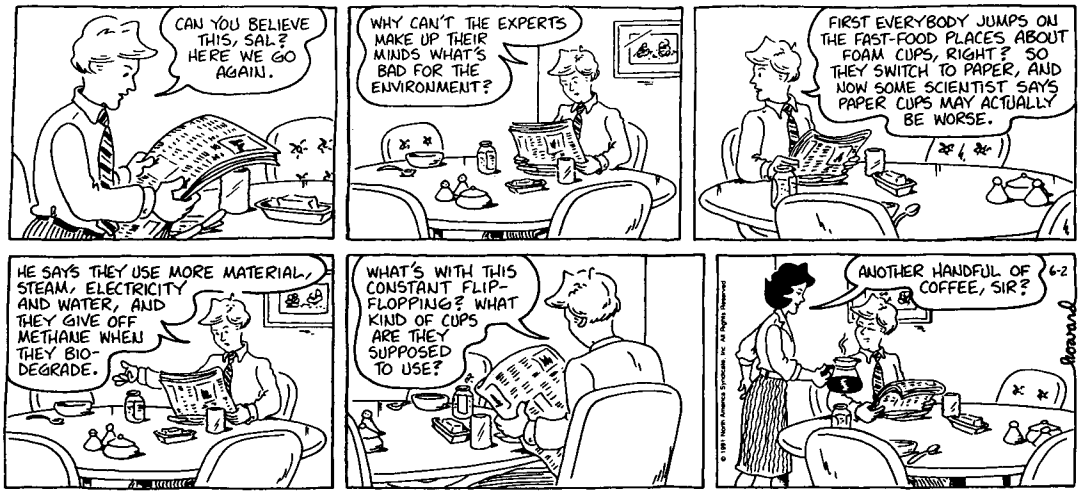
BY LYNN SCARLETT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HE SAYS THEY USE MORE MATERIAL, STEAM, ELECTRICITY AND WATER, AND THEY GIVE OFF METHANE WHEN THEY BIO-DEGRADE.
WHAT'S WITH THIS CONSTANT FLIP-FLOPPING? WHAT KIND OF CUPS ARE THEY SUPPOSED TO USE?
ANOTHER HANDFUL OF COFFEE, SIR?

Tom Tomaszek, president of North American Plastics Recycling Corp., has a promising new product: a plastic packaging film made from recycled material. This innovation could be cause for celebration: American ingenuity at work to turn the proverbial sow's ear into silk. But Tomaszek offered a telltale warning about his product in *Plastics News*. "We really need preferential [legislative] treatment to keep this alive," he lamented. Tomaszek thinks Congess should require plastics companies to use recycled content in their products.

You see, recycled plastic costs up to 20 percent more than "virgin" plastic but doesn't really perform any better. And consumers, notwithstanding professions of green ardor, apparently are frugal with their dollars. A 1991 Roper survey found that more than two-thirds of those queried said they'd pay at most a 5-percent premium for goods with recycled content. Still fewer consumers ever actually pay even the small premium they say they're willing to for "green" goods.

So that puts people like Tomaszek in a quandary. He can't succeed in the marketplace—unless he can figure out how to get his costs down or convince consumers to "buy recycled" and pay more. At least, those used to be the options facing an entrepreneur. But no longer. Not in a policy environment that has made everything fair game for legislation.

Some business lobbyists, erstwhile foes of much environmental regulation, are now vocal proponents of new "environmental" packaging and solid-waste legislation. They see such laws as opportunities to gain market share, secure profits, and shift cost burdens onto competitors—all cloaked, of course, in green rhetoric.

Congressional proposals to reauthorize the Resource Conservation and Recovery Act (RCRA)—first passed in 1976 to regulate hazardous- and solid-waste disposal—would put federal legislators in the business of dictating packaging technology and disposal requirements for packages. Although ostensibly intended to protect the environment, these regulations are simply an attempt to promote the use of recycled material in just about every item on supermarket shelves—despite the fact that recycling does not necessarily save any resources. According to the Congressional Budget Office, the packaging provisions of the proposed regulations would reduce by less than 1 percent the municipal solid waste entering disposal facilities. That's barely 1 million tons of waste out of 200 million tons generated annually. Still, some business lobbyists, cautiously teaming up with environmental interest groups, want these regulations.

The main Senate RCRA proposal, sponsored by Sen. Max Baucus (D-Mont.), details specific national recycling rates for paper, rigid plastics (like plastic soda bottles), aluminum, steel, and glass. If the rates are not met, the bill would require manufacturers to take back, reuse, or recycle their own packages. The most notable House proposal, sponsored by Rep. Al Swift (D-Wash.), would require manufacturers to include recycled materials in their products and packages, make recyclable or reusable packages, or otherwise reduce by up to 20 percent waste associated with a given package.

For advocates of "green" consumerism, these proposals may seem like a good idea. In fact, however, the proposed RCRA legislation would take us one giant step toward a national, centrally planned raw-materials policy. RCRA regulations target packaging, which is not pollution, and put lawmakers in charge of determining what materials manufacturers should use and in what proportions, without regard to relative costs.

Environmental interest groups depict these regulations as the new battleground between industry and the forces of environmental progress. And they may even believe their own rhetoric. But the regulations really are motivated by old-fashioned "rent seeking"—businesses using the political process to achieve a competitive advantage.

Take waste haulers. Some of the big

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private haulers initially saw a potential bonanza in state regulations mandating curbside recycling programs. But the bonanza turned bust. Costs to operate these programs exceeded expectations, largely because gluts of recyclables made the scrap value of those materials plummet.

Thus, for example, Recycle America receives from the city of Seattle just over $50 per ton for recyclables it collects from local households, but collecting one item—mixed wastepaper—costs the company over $110 per ton. Selling the wastepaper brings only $4 to $20 per ton—nowhere near enough to cover costs that exceed the contract fee.

As a remedy, some waste haulers started endorsing the notion that federal legislators should "create markets" for recyclables—mandate their use and artificially push up their scrap value—or make someone else, such as packaging manufacturers, pay for their collection. Presto! No more big losses. And what a great scheme: All this could be done under the mantle of do-good environmentalism.

According to Charlotte Frola of the Solid Waste Association of North America, the legislation benefits big waste haulers in other ways as well. The proposed regulations do little to encourage development of waste-disposal capacity. Indeed, Frola says, the legislation may even reduce the chances for new disposal capacity and thereby artificially raise the price of existing landfill sites owned by the big waste haulers. The legislation would be "a boon for these companies—and they understand this. They've been first in line to support it."

But look who else has been championing some of these legislative schemes. Some glass companies, which have been losing market share to the plastics industry for two decades, like the idea of mandatory recycled content. Why? Because much of the industry, for economic reasons, already uses over 25-percent recycled content in glass products. By contrast, their major competitors in the plastics industry will have a tough time meeting content requirements.

And the battles don't stop here. Brandt Manufacturing Systems, which makes colored coating for clear glass bottles, is pushing for outright bans on colored glass. In fact, the firm's action plan calls for development of "national and international government contacts at all levels for interest in legislation of one-color glass." This would make recycling easier, since no one need worry about getting brown and green glass mixed in with clear glass, a perennial problem for recyclers. A ban on colored glass would also do wonders for the glass-coating business.

Other would-be entrepreneurs in eco-products have appealed for legislation to secure their place in the market as well. An official with EnviroPlastics, which processes recycled plastic, opined, "We need a bill with [recycling-content] standards high enough to create a demand for our product and the business environment in which we can succeed."

Similarly, ConservaTree, which makes paper from "postconsumer" wastepaper (the stuff recovered from residential and commercial trash bins) wants to restrict use of the term *recycled content* to products that use postconsumer waste. This may sounds like no big deal, but little regulatory details can have big consequences. The restriction could mean that all those paper makers that now use manufacturing scrap would not meet recycled-content requirements—and might not be able to compete for juicy paper-supply contracts that require recycled content.

Not everyone likes all these proposed packaging restrictions. Some product and packaging manufacturers see all this legislation for what it is: an attempt at political micromanagement of economic activity. And many fully understand that RCRA proposals would mean higher costs with few, if any, real environmental gains. The problem is, few are willing to say this, at least not publicly, for fear of appearing gray in a green world.

In fact, almost no one in industry has systematically opposed RCRA proposals. Instead, potential losers in this legislative battle appeal for exemptions. Don't do this to my product, they tell Congress, because consumers will suffer, innovation will lag, food will rot, and so on. Or they play the numbers game, pushing for slightly lower recycling rates, rates they can "live with."

Thus, for example, manufacturers of plastic wrap appealed to Swift's House committee for an exemption from the recycling requirements. And the National Food Processors Association argued for an exemption for food packaging. Meanwhile, some paper-industry lobbyists wrangled to get a lower recycling rate written into the Baucus provisions.

Industry lobbyists offer two main reasons for not fighting the legislation directly. First, they fear that opposing RCRA, with its emphasis on recycling, is akin to opposing apple pie and motherhood. And that, they believe, is bad for business. Second, having lost previous regulatory battles, some now calculate that capitulation to the agenda set by a handful of environmental interest groups is the only way to survive at all—"to be a player," as one beer lobbyist put it.

The lobbyist may be right. James Payne, author of *The Culture of Spending*, found that more than 90 percent of congressional testimony comes from supporters of proposed legislation. The RCRA hearing process confirms this pattern. Baucus's staff pulled together a group of industry representatives, environmentalists, and local-government lobbyists before the mark-up of his Senate bill. One attendee described it as a "cheerleading" session.

In this context, industry convictions that some packaging regulations are inevitable become a self-fulfilling prophecy. Potential opponents of RCRA packaging regulations remain silent or content to tinker at the margins of restrictive proposals. Meanwhile, industry beneficiaries of recycling mandates are hard at work in Congress, pushing for policies that will help secure their fortunes.

Lynn Scarlett is the Reason Foundation's vice president for research.

"WE DON'T EXPLAIN"

BY KEN KASRIEL

After 40 years of Communist rule, Hungary wants to be embraced by Europe's family of liberal, rule-of-law democracies. The government wants everyone to believe that the days when people were jailed capriciously, denied due process, and brutalized are over. This may be why it now keeps the press out of the alien detention camp at Kerepestarcsa.

Hungarian police detained eight Chinese visitors in the camp at Kerepestarcsa for 26 days because of "an administrative error."

Since the camp—a political prison for "bourgeois nationalists" and other pariahs in the 1950s—reopened last year, it has held over 7,000 deportees who are not under arrest, formally charged, or given a hearing. Most of the detainees are ex-Soviet, Romanian, Arab, African, or Asian economic refugees caught entering, staying in, or passing through the country without proper papers.

Amnesty International reports that inmates are kept in squalid barracks where they are tear-gassed in closed spaces and often beaten. Some ex-inmates told me they had been held incommunicado. Between January and April, opposition members of Parliament brought to light nine cases in which foreigners with all their papers in order were imprisoned for between 10 and 26 days.

After being picked up at the borders, on the street, at open-air markets, or in occasional raids, the foreigners are held indefinitely by authorities who choose which laws to observe and which to ignore. The Interior Ministry regularly invokes what critics call "the rubber paragraph"—a clause from a 1982 Communist decree that allows the ministry to expel any foreigner whose presence "endangers the state, economic or social interests of the Hungarian Republic." But ministry officials don't obey the decree's six-day limit on deportee detention. An inmate's average stay is three weeks, says the ministry's Col. Julianna Czegény, while some are held "several months." Major Gen. Karoly Nagy, the Interior Ministry official who overseas the head of the national police, says the six-day limit doesn't mesh with the "present national interest."

Critics concede that controlling the flow of aliens is a legitimate aim but decry what they see as lingering police-state practices. "We have lived for too long under circumstances where the question of legality could be reduced to a formality in the interests of public security, of the state, or of the party," Ferenc Köszeg, a former *samizdat* journalist, told fellow Parliament members in April.

György Faludy, an 81-year-old poet and journalist who did time in Kerepestarcsa in the '50s on charges of "Trotskyism" (for fighting in the U.S. Army during World War II) says the authorities' fears "are understandable, but the methods they use are just awful." He was "scandalized" to learn in April that since last fall a wall at Kerepestarcsa has carried one of his poems on a memorial plaque to the camp's victims of Stalinism.

I first noticed the plaque on a ministry-led tour through selected parts of the camp in January. Our escorts insisted we were visiting not a prison but a "foreigners' temporary accommodation." Yet the people living there were not free to leave. The brick walls were topped by barbed wire and the windows had bars. Truncheon-wielding guards led dogs with steel muzzles.

The housing we saw was a crowded sty. About 35 men, women, and children were crammed into a room furnished only with metal bunks. Personal items could only be hung on nails or bars. The bathroom, which lacked hot water and flushing toilets, was flooded, splattered, and putrid. Bread crusts and other leftovers were everywhere: on beds, piled on window sills, or in bins mixed with water, orange peels, and unidentifiable slop. Denied utensils, inmates used bowls cut from plastic bottles.

"The conditions," says opposition M.P. László Körösfói, "don't match the average human norms, even though according to the head of the camp, there was the normal quarterly cleanup before I went there. There was dirt, disorder, and smell."

We had about 15 minutes with the inmates, who said their diet consisted of tea, bread with cold lard, bean soup, hard-boiled egg halves, an occasional tomato, and a twice-weekly slice of pork. A Chinese boy handed me a note in cramped strokes and broken English. It said that on December 27 police had asked him for his passport near Moscow Square, and that instead he had produced a receipt from the South African consulate stating (in English) that his passport was there for visa processing. His resi-

KEN KASRIEL

dence permit was still valid. "Please," the note closed, "help tell police to clear up soon this problem."

As the return bus was readied, I asked ministry spokeswoman Ester Szábo about the complaints and the note, both of which she dismissed. I asked why inmates would lie. "They want you to feel sorry for them," she said. "Have you ever been to prison before? Everybody says they are innocent." So now the camp *was* a prison.

On January 22, a week after the tour, Köszeg, a lawyer, a translator, and I met police Vice Col. Jozsef Lukács in the camp. The Chinese boy's story turned out to be true. And to our surprise, he'd entered the prison with seven other Chinese in similar circumstances: Their residence permits were valid, and when stopped by police they also produced receipts from the South African consulate. Köszeg said he saw a letter from camp officials asking that the matter be investigated. It was dated January 20—the day our meeting was arranged.

For about three weeks, the eight had failed to convince Hungarian authorities to see for themselves that their papers, some 10 miles away, were in perfect legal order. They were told everything would be settled on their first Monday in the camp. But Monday came and went, and "nobody spoke to us and told us what would happen," one said. "We tried to make things as clear as possible so we will get free."

The Chinese detainees walked out with us after 26 days' detention. Col. Lukács said the delay was "an administrative error due to linguistic and communications difficulties." He asked that the case not get "any extra publicity."

It did—in our local *Budapest Week*, in Köszeg's political weekly (the organ of the Free Democrats, the largest parliamentary opposition party), and in *The Guardian* of London. Soon afterward, national police spokesman György Suha criticized my piece in *The Guardian* for calling the detention illegal. It wasn't, he said, since police didn't know what the receipts from the South African consulate were. When I mentioned Col. Lukács's admission of "administrative error," Suha said: "I don't know what to do about Mr. Lukács. The police made a mistake by allowing Mr. Lukács to comment."

The Chinese and some other ex-inmates contacted Amnesty International, which in March publicly urged the government to probe what Amnesty researcher Paul Miller called "our most serious concerns since the change of government": "the pattern of ill treatment in the camp on regular occasions." According to Amnesty's statement, "beatings are reported to have occurred often in the camp," such as when "inmates demonstrated against what they considered to be unacceptable hygiene and other conditions" last December. The statement also cited a report that a Chinese inmate was "hit about the face and head and as a result lost consciousness, after which he was kicked. Following pressure from other inmates, he was taken to a hospital."

The ministry's first response was brusque, the second dubious. "There's no need for an investigation," responded Interior Minister Peter Boross. "You know the sort of people who make these reports—they're the oversensitive liberal philanthropists you find in every country."

Two weeks later, though, ministry spokeswoman Szábo said that the alleged incidents had indeed been probed—before Amnesty's request. The guards were cleared. The Chinese man was hospitalized after an escape attempt, "which the guards prevented," she said. "After he was taken back, he complained he didn't feel well. He claimed that he was being hurt." A camp doctor found no injuries, and the next day, "as his state did not improve, he was taken to a hospital," where he escaped.

Suha shed some light on the nature of internal probes by the Hungarian police. Eight Chinese claimed that guards demanded bribes of $10 to $20 to use the phone. "We would have sacked the person on the spot," Suha said, but the investigation came up dry. Asked how it was carried out, he said, "Normally, we talk to the accusers." Did that mean the Chinese were questioned? "Definitely not," he said, apparently unfazed.

Hungary does not have a strong tradition of liberal democracy. From invading Mongols to Turkish, Austrian, and Soviet occupiers, its historical legacy is ingrained xenophobia and authoritarianism, which taint the two-year-old democratic government. Backed by a three-party parliamentary coalition that can reliably muster 57 percent of delegates' votes, and with Communist holdovers like Col. Czegény and Major Gen. Nagy in its top ranks, the Interior Ministry proceeds largely unchecked.

Thus Nagy didn't seem troubled when telling me that police lack "the practical knowledge which would ensure legal and correct procedures." Interior Minister Boross responded to press questions about police treatment of Chinese by claiming that several have committed "brutal murders." (Neither the Justice Ministry nor the national or Budapest Police have any record of Chinese being convicted or even charged with murders.) Defending a controversial border-tightening decree, Boross said: "Many have debated whether or not there are legal grounds for it, but we don't have time to analyze."

In March the British *Independent* correspondent Adam LeBor asked Suha for permission to enter the camp at Kerepestarcsa. He was refused, Suha said, because the press "has not interpreted the situation in the camp as the interior minister would have liked." LeBor ran the quote. Suha then retracted the statement in the Hungarian press.

I saw an opening and asked if I could get into the camp. "You cannot go, because we banned all foreign journalists and domestic journalists from the camp categorically," he said. "This is due to different interior decisions." Asked the basis for the decisions, he said: "We don't explain. Don't bring me into an unpleasant situation. It's none of your business."

Ken Kasriel writes for Budapest Week. *He has covered Hungarian politics for* The Guardian *and* The Christian Science Monitor.

Questioning the Unquestionable

BY CLINT BOLICK

Forbidden Grounds: The Case Against Employment Discrimination Laws
By Richard Epstein, Cambridge, Mass.: Harvard University Press, 530 pages, $39.95

Richard Epstein's *Forbidden Grounds: The Case Against Employment Discrimination Laws,* is perhaps the most politically incorrect book ever written. It violates the most sacred of contemporary taboos by calling for repeal of major portions of the nation's civil-rights statutes.

This sweeping treatise by the nation's most provocative legal scholar has the potential to revitalize a debate that has been silenced for a generation. As Epstein's *Takings* fostered a revolution in property-rights jurisprudence, so could *Forbidden Grounds* provide an intellectual foundation for a revolution in civil-rights law aimed at replacing the current regime of government coercion with freedom of contract and association.

And none too soon. For the direction our nation takes on civil-rights issues will greatly influence not only the future of race relations in America but also our ability to survive as a free and prosperous society.

The reach of the complex maze of employment discrimination laws is pervasive and ever-growing. "The imperialism of the movement is such," writes Epstein, "that there is no issue within the realm of employment, and indeed within the larger realm of social endeavor, on which the civil rights laws do not exert a heavy, and baleful, influence."

The Bush administration's shocking capitulation on the 1991 Civil Rights Act completed the transformation of a reasonable 1964 antidiscrimination statute into a powerful engine of social engineering. Epstein's book examines the explosive growth and perverse effects of

Epstein wants to revive freedom of contract and association in employment.

government regulation of employment decisions and makes a compelling case for a radical change in direction.

Epstein begins with a discussion of the evolution of rules of freedom of contract and association that promoted harmony and economic progress. But in human nature, Epstein observes, individuals often discriminate against one another for a variety of reasons, some rational and some not.

In a free society, the costs of irrational discrimination fall on the discriminator, making irrational discrimination somewhat self-correcting. "The greater the class of persons who are regarded as off-limits, and the more irrational the preferences," Epstein argues, "the more the decision will hurt the people who make it, and the more numerous the options it will open to rival traders."

The 14th Amendment and civil-rights laws passed after the Civil War were designed to protect the essential freedoms of contract and property against infringement by abusive state governments. But, as Epstein observes, the Supreme Court nullified this protection in two stages. In the 1896 *Plessy v. Ferguson* decision, the Court upheld the view that racial discrimination was within the "police power" of the state. And starting with the late 1930s, the Court eliminated judicial protection for freedom of contract and other economic liberties.

These decisions unleashed a torrent of economic regulations at every level of government that destroyed freedom of contract, to the detriment of economic outsiders generally and blacks specifically. The 1964 Civil Rights Act was the culmination of attempts to establish equality under law and to obtain economic emancipation for blacks.

"So great were the abuses of political power before 1964," Epstein writes, "that, knowing what I do today, if given an all-or-nothing choice, I should still have voted in favor of the Civil Rights Act in order to allow federal power to break the stranglehold of local government on race relations."

The employment provisions of the Civil Rights Act imposed a modest restraint upon the free market. As Sen. Hubert Humphrey declared, "Employers may hire and fire, promote and refuse to promote for any reason, provided only that individuals may not be discriminated against because of race, religion, sex, or national origin."

Initially, the law was enforced by courts in a common-sense manner, applying a "disparate treatment" model. When an employer treats similarly situated people differently, a presumption arises that the reason for the different treatment is race (or sex, etc.). Under the disparate-treatment model, the employer could rebut this presumption by demonstrating a nondiscriminatory reason for its conduct.

But before long, the Supreme Court created out of thin air a new construct of discrimination, "adverse impact," under which plaintiffs may establish a case of discrimination merely by demonstrating statistically that employment standards (such as tests) produce different outcomes for different groups. As Epstein observes, this almost always happens, given the different education and workforce-experience levels of different groups.

Epstein argues that the costs of affirmative action, like all forms of discrimination, are borne by those who engage in it.

Despite the weak inference such statistics establish in the absence of proof of discriminatory intent, the Court created a nearly impossible standard of "business necessity" for employers to rebut such evidence. Notes Epstein, "The weaker the plaintiff's [case], the more obstacles are placed in the path of a defendant who seeks to rebut it—exactly the opposite of what any sensible system of law should require."

Adverse impact impels employers to seek the safe harbor of racial quotas to avoid almost certain liability. But as Epstein observes, it also leads to consequences harmful to its purported beneficiaries. For instance, employers can relocate to all-white suburbs and never have to worry about discrimination charges, because the local population contains no members of minority groups. Those companies that adopt quotas typically compete for the best-qualified minority candidates. Either way, less-qualified minorities, who could compete in a free market by working for lower wages, are left behind.

Applying freedom-of-association principles, Epstein defends voluntary affirmative action, particularly in the private sector. Once again, Epstein argues that the costs of affirmative action, like all forms of discrimination, are borne by those who engage in it.

Outside the area of race, Epstein charges that the justification for interference with freedom of association is even weaker, since discrimination on the basis of sex, age, and handicap is often rational. Strict antidiscrimination principles in these areas also have produced perverse and costly effects. The often overlooked Age Discrimination in Employment Act, for instance, is enforced to compel employers to ignore costs in employment decisions, with devastating economic consequences.

Epstein's prescription is to repeal the antidiscrimination laws and restore freedom of contract and association, which were the original goals of the civil-rights movement. The current antidiscrimination regime, Epstein says, is "redistributive," "capricious," "expensive," and "wasteful." By contrast, Epstein concludes that "freedom of association works, because it means that both sides stand to gain from the transaction."

For the most part, Epstein's analysis is keen, his conclusions sound. He has correctly identified adverse impact as an intellectually and legally unsound doctrine that imposes serious societal costs. But he overlooks the most pernicious ramification.

By establishing a legal presumption that different outcomes among racial groups are caused by discrimination (a presumption now enshrined by the 1991 legislation), the law necessarily presumes the cause is not other factors, such as inadequate skills, welfare dependency, and cultural isolation. So long as we sweep these serious problems under the carpet of racial quotas, we will never solve them.

Epstein also characterizes too much discrimination as "rational," particularly in the area of gender. He contends that "the biology of sex differences is profound" and influences virtually "every aspect of human conduct," thus making a great deal of sex discrimination rational. But sex-based generalizations are often untrue in individual instances, and blanket discrimination in the job context

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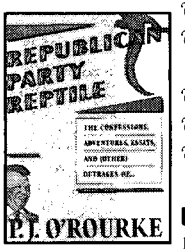

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is almost always irrational. Epstein goes far beyond the argument he needs to make to demonstrate the superiority of freedom of contract to coercion, and in so doing he undermines his own arguments.

Epstein concedes his ideas are radical and well outside the mainstream. Given the consensus supporting the antidiscrimination laws, is Epstein merely tilting at windmills?

Perhaps not. Twenty-eight years of social engineering disguised as civil rights have done little to help the most disadvantaged yet have polarized Americans along racial lines more bitterly than ever.

Yet Epstein's prescription for repeal is hardly viable. So long as the legacy of discrimination manifests itself in contemporary exclusions based on race, strong enforcement of the 1964 Civil Rights Act (as originally designed) is necessary to make good our nation's promise of equal opportunity.

But the perversions of the antidiscrimination laws are steadily eroding opportunities for everyone. A change of policy direction is urgently needed, emphasizing empowerment through economic liberty. By boldly trespassing upon forbidden grounds, Epstein's devastating critique of the current regime calls conventional wisdom into question and, we may hope, will inspire a spirited debate that is long overdue.

Clint Bolick is vice president and director of litigation of the Institute for Justice in Washington, D.C., and author of Unfinished Business: A Civil Rights Strategy for America's Third Century.

The Irrelevance of Law

BY DAVID FRIEDMAN

Order Without Law, by Robert C. Ellickson
Cambridge, Mass.: Harvard University Press, 302 pages, $39.95

Robert Ellickson, a law professor at Yale, has written a book demonstrating the irrelevance of law to many of the issues it is supposed to deal with and explaining the institutions that substitute for it. It is a book that both libertarians and students of the law should find interesting.

The book starts with a story and a county. The story is Ronald Coase's parable of the farmer and the rancher, one of the best-known brief arguments in the literature of law and economics. The county is Shasta County, a largely rural patch of Northern California.

Coase asked how the behavior of a farmer and a neighboring rancher would be affected by the legal rules they lived under. Would a legal regime in which the rancher was legally responsible for damage done by his cattle result in fewer strays and less damage than a legal regime in which it was up to the farmer to fence the cattle out or take the damage? His conclusion, one of the first statements of what came to be called the Coase Theorem, was that as long as the parties could readily bargain with each other over their actions, the legal rule would affect the pattern of side payments—who had to pay what to whom—but not the use of the land.

Shasta County is a patchwork of open and closed range, designed by the accidents of history to test Coase's conclusion. In open range the legal rule is that the farmer is responsible for fencing out straying cattle, while in closed range the rule is that the rancher is responsible for fencing his cattle in. Allowing for the fact that real legal rules are somewhat more complicated than academic parables, the situation corresponds almost exactly to Coase's hypothetical.

Ellickson studied what actually happened in Shasta County with regard to straying cattle, land use, fence building, and a variety of related issues, using interviews, aerial photographs, and searches of the relevant records. The area studied included both closed and open range; the period studied included one successful and one unsuccessful attempt to persuade the Board of Supervisors to convert territory from open to closed range.

Ellickson's conclusion is surprising and interesting. Coase was correct in predicting that land use would be unaffected by the legal rule. He was incorrect in predicting that side payments would be affected. Ellickson's conclusion is that the legal rule about who was liable for straying cattle had no effect at all on the behavior of ranchers and farmers insofar as it involved cattle straying onto the farmers' land. Most of his book is an attempt to explain that result and apply it to a wide range of other circumstances.

What Ellickson discovered was that interactions between neighbors with regard to straying cattle and many other things were controlled not by law but by a system of norms, a private law code having no connection to courts, legislatures, or any other agency of state power. When a rancher was informed that one of his animals was trespassing, he was expected to apologize, retrieve the animal, and take reasonable precautions to keep it from happening again. If significant damage had been done, the rancher was expected to make up for the damage—in one case by helping replant a damaged plot of tomatoes.

The system was self-enforcing. If a rancher consistently let his animals stray, or failed to offer to make up for significant damages, the victim would respond by initiating true negative gossip—spreading the word that that particular rancher was not behaving in a proper, neighborly way. If that failed to work, straying animals could be transported far from the victim's (and rancher's) property—imposing significant costs on the rancher, who had to retrieve them. In extreme cases, trespassing animals might even be deliberately injured. The one thing good neighbors almost never did, even under quite severe provocation, was go to court.

Having explained the working of this particular part of Shasta County norms, Ellickson then tries to explain the occasional political struggles over pro-

posals to convert areas from open to closed range—a change in a set of legal rules that, by his account, nobody pays any attention to. He next explores the role of similar sets of norms in settings ranging from whalers in the 19th century to professors photocopying each other's articles—in cheerful violation of the copyright laws—in the present. Finally, he spends the second half of the book sketching out a general theory of norms.

Ellickson's central thesis is a simple one: that close-knit groups tend to develop efficient norms, sets of rules that maximize the welfare of the members of the group. He concludes that while formal law is important and useful in human affairs, it is less important and less useful than generally believed. In a wide variety of situations, people not only succeed in resolving their conflicts without recourse to law, they do it by mechanisms that work considerably better than the legal system.

One important issue Ellickson does not explore is where such norms come from and why they tend to be efficient. Well-designed rules suggest a designer, but while deliberate design may explain some systems of religious norms, it has little relevance to norms that apply to straying cattle and fence building in Shasta County or the resolution of conflicting claims to dead whales.

The obvious alternative to deliberate planning is evolution. Perhaps, over time, societies with better norms conquer, absorb, or are imitated by societies with worse norms, producing a world of well-designed societies. The problem with that explanation is that such a process should take centuries, if not millennia—which does not fit the facts as Ellickson reports them. Whaling norms, for example, seem to have adjusted rapidly to changes in the species being hunted.

Perhaps the explanation is evolution, but evolution involving much smaller and more fluid groups than entire societies. Consider a norm, such as honesty, that can be profitably followed by small groups within a society, applicable only within the group. Groups with efficient norms will prosper and grow by recruitment. Others will imitate them. Groups with similar norms will tend to fuse, in order to obtain the same benefit on a larger scale. If one system of norms works better than its competitors, it will eventually spread through the entire society. When circumstances change and new problems arise, the process can repeat itself on a smaller scale, generating modified norms to deal with the new problems.

Ellickson concludes that formal law is less important and less useful for resolving conflicts than commonly believed.

This conjecture about how norms arise and change suggests a prediction: Even if a norm is efficient, it will not arise if its benefits depend on everyone following it. Consider the whaling norms that Ellickson discusses. It is in the interest of any pair of captains to agree in advance to an efficient rule for dealing with whales that one ship harpoons and another one brings in, just as it is in the interest of a pair of individuals to agree to be honest with each other.

But a rule for holding down the total number of whales killed so as to preserve the population of whales is useful only if everyone follows it. The former type of norm existed, the latter did not—with the result that 19th-century whalers did an efficient job of hunting one species after another to near extinction.

As this example suggests, Ellickson's account of norms does not provide a complete solution to the anarchist's problem of how to maintain order without law. It does suggest an attractive solution to a large part of the problem—and one that can be observed working in a wide range of real-world settings.

David Friedman is the Olin Fellow in Law and Economics at the University of Chicago Law School.

Back on Track

BY WILLIAM D. BURT

Railroads Triumphant: The Growth, Rejection, and Rebirth of a Vital American Force
By Albro Martin, New York: Oxford University Press, 428 pages, $22.95

Every now and then economic events yield one of those startling coincidences that illuminate fundamental choices. Example: While planners in the former Soviet Union discover that a quarter of the grain harvest rots in the field or sits on railroad cars somewhere, the Burlington Northern Railroad announces an innovative system to allocate empty grain cars—always scarce at harvest time—according to transferable futures contracts. Completing the irony, B.N. recently agreed to help the Russians create a new distribution system.

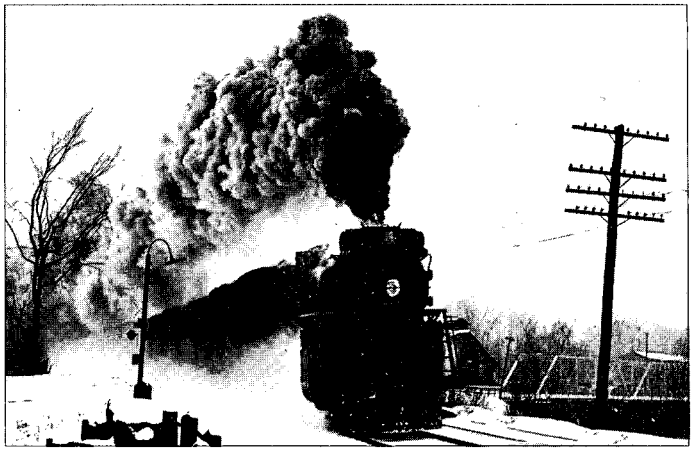
U.S. railroad managers know about restructuring a Sovietized industry, for that has been their principal mission since Congress substantially deregulated the railroads (and most of the trucking industry) 11 years ago. The politicians acted only when seven Northeastern railroads went bankrupt and the problem threatened to metastasize nationwide. But warning signals—car shortages, track deterioration, anemic earnings—had been flashing for decades.

How did we come to have a railroad problem? Harvard Business School professor Albro Martin posed that question 20 years ago in *Enterprise Denied: Origins of the Decline of American Railroads 1897-1917*. Martin took a hard look at the Hepburn Act of 1906 and the Mann-Elkins Act of 1910, which revived the Interstate Commerce Commission after several Supreme Court decisions had drastically limited that agency's powers. He did not like what he saw in these triumphs

of Progressive thinking over railroad power and arrogance: dishonest debate, gleeful expropriation, and a willingness to "pay any price, even emasculation itself... to cut this haughty servant down to size."

With these statutes, Congress moved to freeze railroad rates just as general price inflation was awakening from a 30-year slumber. Concurrently, antitrust challenges were hurled at the railroads: In 1904, the Supreme Court ordered dissolution of the combination of the Great Northern, Northern Pacific, and Burlington railroads, and President Theodore Roosevelt acted to break up Union Pacific and Southern Pacific. Newly emboldened state regulators piled on additional burdens.

The result: Railroad earnings swooned and an intensive rebuilding of the system, underway since 1897, ground to a halt. In one tumultuous decade, America's railroads went from hope to despair and were nationalized on the eve of the nation's entry into World War I amid newspaper headlines threatening food riots in Northeastern cities and exhaustion of coal supplies in freezing rural villages. Once war came, sadly, there was no going back.



Americans paid dearly to limit railroads' economic power. Only after the rail industry hit bottom in the '70s was it freed to be efficient.

The reception accorded *Enterprise Denied* illustrates Thomas Kuhn's contention that when the facts contradict prevailing theory, the facts will be ignored until accumulated embarrassments spur an intellectual upheaval. Here, the crisis is yet to come; interpretation of the railroads' troubled relationship with the state remains dominated by 1960s revisionists, who, following Gabriel Kolko, assert that its leitmotif is an unremitting effort by the railroads to obtain through government intervention the rate stability that always eluded private cartels.

Never mind that Edward H. Harriman, eyeing the Hepburn Act, counseled other Union Pacific directors to cut back on planned improvements and divert the money to sharply increased dividends. ("If we don't," Harriman warned, "the government will take it away from us.") Or that the market value of railroad securities imploded following the act's passage. Never mind Erie Railroad President Fred Underwood's 1910 outburst, "It would be well for the railroads of this country to go on strike against the politicians." Who cares about *his* anguish? Sympathetic figures these dour, dedicated men were not, and class analysis takes no account of their frustration.

At last Martin rejoins the fray with publication of *Railroads Triumphant.* Now professor emeritus at Bradley University, Martin brings the railroad industry's saga up to date and positively rejoices in what he sees as the industry commences its second decade in the free market: substantial consumer benefits ($48 billion a year in logistics expert Robert V. Delaney's estimate, covering both rail and truck transportation) and renewed entrepreneurship in America's first modern business.

Without sacrificing the passion and drama that have always enlivened railroading, *Railroads Triumphant* builds on a couple of analytical insights first expressed in *Enterprise Denied.* One is that this nation's would-be industrialists inherited a large territory free of artificial trade barriers—a tremendous arena in which to sort out comparative economic advantages of cities and regions, surely, but one that required what used to be called "the annihilation of space and time" for the process to work. Martin reminds us that not everyone welcomed universal freight and passenger transportation, however.

Railroads wanted all the freight traffic they could handle profitably, and they would extend the same rate to producers located far from the market that they gave those located closer in, in order to get everyone's business. If they faced competition anywhere along their lines they would meet it, while trying to maintain higher rates elsewhere. In this way, railroads *created* markets and multiplied consumers' competitive sources of supply. Few industries ever did more for the public, but the beneficiaries were scattered while the concentrated losers—those whose locational advantages had been swept away—muttered that railroads should charge by the mile.

Thus did railroad managers learn early on that their business entailed complexities that defied explanation and affronted common intuitions. They resigned themselves to the likelihood that the public would always feel free to impose superficial notions of fairness without regard for the consequences and acquired the habit of conducting commerce under the table by granting rebates from the published rates. This did not sit well with Americans; Roosevelt savaged the practice as "unmanly" in 1904. But we may ask why it was necessary in the first place.

The subterranean nature of early railroad competition creates a problem for historians, and it is precisely here that revisionist analysis jumps the track. If one were to measure the morals of, say, 1880 Dodge City by consulting temperance league manifestos, Sunday sermons, and the public comments of politicians and businessmen, one would conclude that Dodge City's piety was great indeed. So it is with the railroads' perennial attempts to "stabilize" competition.

Let's look at the reality, says Martin: steadily falling rail rates throughout the last three decades of the 19th century. Rebates, rate bureaus, and all, the rate structure that emerged from the period deserves to be considered an artifact of what F. A. Hayek called the spontaneous order. Lacking any discernible rationale, it

HARRY MEISS (MICHAEL SCHLEIGH COLLECTION)

instead presented an inviting target for Progressives eager to "scientifically" regulate everything from commercial to sexual intercourse. What they overlooked was a more important logic, that of perpetual compromise among shifting economic forces too numerous and subjective for any individual to comprehend, much less plan.

There runs through this work an argument that bigger might have been better, that Americans have paid dearly for their unreasoning suspicion of economic power. Many people casually assume that fewer sellers always means higher prices, but economies of scale matter, and some of our most intractable economic problems have been caused by government's protecting small, inefficient producers (witness the perennial "farm crisis").

After aiding railroad construction with eminent-domain powers, land grants, and financing, government proved unwilling to countenance the creative destruction required to consolidate fragmented railroads in step with integration of the nation's economy. Too much was at stake, at least until the 1970s. Once the rail industry hit rock bottom, Burlington Northern was free to reassemble what the Supreme Court had torn asunder; Union Pacific could restore the direct access to San Francisco that was denied when T. R.'s trustbusters broke up UP/SP; and Southern Pacific, which now reaches Chicago on the direct route, could quit hauling Oregon lumber eastward via El Paso and Pine Bluff.

What railroad consolidation offered all along was actually competition on a higher plane of efficiency and *specialization*. This is why Fred Underwood boiled with rage: The New York Central and Pennsylvania railroads would survive no matter what, but Erie, struggling to create a niche as the leading fast-freight hauler between Chicago and New York, needed to complete the massive reconstruction Underwood had begun in 1905. Financial panic and Mann-Elkins cut short those plans, and Erie remained a weak competitor thereafter. Its magnificent line across western Ohio and Indiana, doggedly rebuilt as

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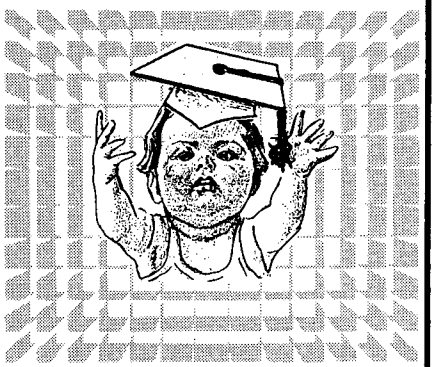

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Woodrow Wilson girded for war, is but a sad memory now.

Today, specialization is the name of the game. The least-utilized portion of the railroad network has been spun off to shortline and regional railroads that emphasize personal service and typically operate without unions or high overhead. Railroads differentiate themselves by the freight car technologies they promote (trailers on flatcars? trailers with rail wheels attached? stacked containers?), the commercial arrangements they prefer (retail to the customer vs. wholesale to major ship lines and trucking companies), and the way they operate in general. I suspect few railroaders feel "triumphant," for in this brave new world it is possible to fall flat on your face. Who has triumphed with deregulation? The public.

William D. Burt is president of a railroad-terminal services company in Binghamton, New York.

Mencken for the Masses

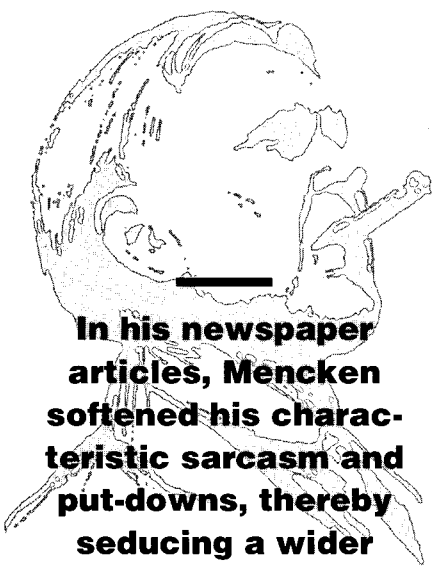
BY DANIEL KLEIN

The Impossible H.L. Mencken: A Selection of His Best Newspaper Stories
Edited by Marion Elizabeth Rodgers, New York: Anchor Books, 707 pages, $15.00

Reading any of the six volumes of Mencken's *Prejudices*, one feels like an intimate friend hearing Mencken's voice across a dinner table. The sentences sizzle and the ideas dazzle. But when reading the simpler newspaper articles gathered in this new collection, one feels more like a spectator in an enormous stadium packed with the full range of human types. There is some bite to the articles, but enough wit and affection to win over the crowd.

After all, the reader who purchased *The Smart Set*, *The American Mercury*, or *Prejudices* was buying Mencken. The same cannot be said of the reader of the *Baltimore Evening Sun*, so in this selection of his newspaper articles, Mencken's prose is simplified for a wider readership. There are fewer glittering nuggets in the vocabulary, the amusing examples are piled less high, and rarely does an article fill more than six pages. Also, he softens his tone. The sarcasm is less soaring. The surprise put-downs are fewer; the descriptions of the American scene less audacious. Mencken's easier tone and less heroic hypotheses permit him seduction of a wider audience.

For example, in a piece on telephones, Mencken remarks on sitting down to dinner "the other day...without any impertinent and imbecile jackass summoning me from the table to the telephone." But then he softens the statement: "I speak of jackasses and morons, perhaps seeming to lay it on a bit thickly."



In his newspaper articles, Mencken softened his characteristic sarcasm and put-downs, thereby seducing a wider audience.

Besides using less spice in the preparation, Mencken prepares more common dishes. Many of the subjects are terrifically mundane. He ruminates on radio programs, on traffic, on movies, on jazz, on bald heads, on New York, on Baltimore, on banks, and on hot dogs. Also, there are 13 articles on the Scopes evolution trial and 37 on national political conventions (only eight of which are in Malcolm Moos's collection of Mencken, *On Politics*).

Two articles concern the 1921 boxing match between Jack Dempsey and George Carpentier, the handsome and graceful war hero from France. The first article is Mencken's account of Dempsey thoroughly clobbering the challenger. Mencken's piece was controversial because all the sports writers reported that Carpentier put up a strong effort. Interviews with the fighters confirmed Mencken's account.

Mencken followed up with an explanation of how the entire corps of sports writers, with the public in their train, fell into line in the making of a legend. Besides explaining the many factors particular to Carpentier, Mencken lays out several points about the sports writers: First, since "they are all in favor of prizefighting as a sport...their subconscious prejudice is against a capital fight that is one-sided and without dramatic moments." Second, "After they have predicted confidentially that a given pug will give a good account of himself, they have to save their faces by describing him as doing it." And finally, "they are, like all other human beings, sheep-like, and docilely accept any nonsense that is launched by a man who knows how to impress them." The article is a model piece of social psychology, and it shows Mencken's fascination with the plasticity of human thinking.

The five-article section called "The Dark American" deserves notice. It collects some of the most interesting of Mencken's newspaper work. The first article warmly applauds the open letter to President Wilson by the dean of Howard University, which eloquently asks that blacks enjoy the same protection of property and political rights that whites enjoy. The second article denounces violently the peremptory rejection of a black applicant to the Law School of the University of Maryland in 1935.

In the third and fourth Mencken becomes almost indignant (something he prided himself on not doing) over the lynching of a black man, evidently a murderer, on Maryland's Eastern Shore in 1931. Mencken describes the affair as

"a complete collapse of fair process" and reprimands state officials for not taking serious steps to arrest the offenders. The last article in the section concerns a case in violation of a local proscription on interracial activity, "Mencken Calls Tennis Order Silly, Nefarious."

Those who have heard the charges that Mencken had it out for Jews should consult the 1938 article "Help for the Jews," in which Mencken exposes the "gross and disgusting peck-sniffery" of Roosevelt for not letting the Jews pour into the U. S. "Why shouldn't the United States take in a couple of hundred thousand of them," Mencken wrote, "or even all of them?"

The book's editor, Marion Rodgers, provides a fine introduction that includes fresh material from Mencken's unpublished "Autobiographical Notes," such as the following: "If it is a fact that I am doomed to go unheeded, then I don't care a damn. I write because I like it, not because I want to convert anyone." The singularity of Mencken is that when he says something like this, you believe him.

Even the average newspaper reader, the common man Mencken elsewhere handled roughly, could sense the sincerity and integrity behind Mencken's words. Although Mencken showed restraint in his newspaper articles, his integrity permitted him even there to air ideas more pungent and unconventional than perhaps those of any other personality ever in the American mass media.

This volume has one regrettable feature: the cover illustration by David Levine. It is hideous and false. Never have I seen a photo of Mencken with eyes menacing *and* mouth grinning. In every photo of Mencken grinning, he bears an expression fit for a boy that just blew out the candles on his birthday cake. Further, the ears and cigar are absurdly, even obscenely, enlarged. Levine's drawing is the perfect liberal caricature of Mencken as a repulsive and ridiculous old man. That caricature has nothing to do with the man revealed in the pages of this book.

Daniel Klein is assistant professor of economics at the University of California, Irvine.

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"... knowledge without wisdom has brought us to the edge of destruction and may at any time push us over the brink."

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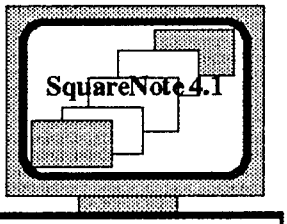

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DEFICIT DANCE

BY THOMAS W. HAZLETT

Hi. I'm the Federal Government, and I am an overspender. I can't get within $400 billion of balancing my checkbook. I acknowledge that I have a problem and I need serious help.

In a sense, this is what the Democratic House members now hawking a balanced-budget amendment are saying: Stop me before I deficit spend again. Clever move. Like the boozer who invited family and friends to the A.A. meeting, BYOB. The inside word is that the rascals are hoping a constitutional amendment will actually force taxes up.

While everyone seems to agree that the Democratic Party is clueless and desperate (including their own 1992 presidential standard-bearer, who is careful to tell voters he only puts the *D* after his name because it's a rule), it has performed the most outstanding public-policy reversal of this whole generation. As recently as the late 1970s (the last time they had even a malaiseful grip on executive power in these United States), the Democrats were mesmerized by the Joy of Deficits with virtually transcendental conviction.

Their church affiliation was Keynesian, and its Holy Grail was the fiscal magic of deficit budgets. Deficits would sweep unused resources into productive enterprise and bulk up the GNP. "Deficit financing" was commonly used in sentences ending with "priming the fiscal pump" or "jump-starting the economic engine" in both Democratic platforms and Econ 2 exams. (Yes, due to a loophole in the ban against teaching religion in the public schools, they blessed us with this article of faith in the textbooks of the 1950s, '60s, and '70s.)

It was only when Ronald Reagan embraced the theory that deficits acquired a suspicious reputation. This is all very humorous historically, because fashionable liberal opinion absolutely vilified as reactionary ideologues those who worried about deficits.

It was not always so. The Nobel laureate James Buchanan believes that the Keynesian revolution in economic theory dramatically changed a deep social aversion to government deficits. The conversion to the "new economics" took place during the New Deal, and it was not driven by intellectual discovery. Indeed, when the colorful John Maynard Keynes came to the USA to explain to President Franklin Roosevelt his cutting-edge model determining deficits to be sound economic pick-me-ups, Roosevelt remarked that he hadn't understood a word spoken by the professor—but that he thought his government was already doing it. And so they were: While *surplus* budgets had previously been the order of the day, we have had exactly six surplus budgets since 1933 (three under Truman, three under Eisenhower).

Prior to the New Deal, posits Buchanan, politicians who ran up deficits were assumed to be scoundrels. Profligate cads playing fast and loose with the public purse, in fact. But then Dr. Keynes crafted a new science. In the throes of the Great Depression, his new fiscal clinic set up shop to dispense political therapy: Spend lots, tax less—the deficits will pay for themselves. The policy makers, straining so as not to be too eager, obliged. (About as reluctant to swallow this new medicine as you'd be if your physician, diagnosing you as "stressed out," prescribed six months at the Cancun Club Med, billable to Blue Shield.)

So complete was the spiritual conversion of both Bubba and the professors that *balanced budgets* became scroogelike policy pleasures, possibly even unconstitutional ("cruel and unusual," don't ya know). Now deficits were expansionary, progressive—and good politics. (Electoral IQ Test Question: Would you rather be the president who boldly stimulated America's private sector or contracted it?)

It is no surprise that the Democrats, having forged this remarkable spinning of economic reality, are furious with GOP thievery in the 1980s. (Note that the only upper-income group to suffer in Reagan's America, it seems, are Democratic Party functionaries.) The supply-side promise, in its more popular and fantastic renditions, was no more honest than had been the Keynesian. Feel-good pols such as Jack Kemp boldly asserted that tax-rate reductions would alone provide for both private and public prosperity. If true, who could object to cutting taxes to zero?

But, alas: The real level of taxation is what the government *spends*. Every dollar must be disgorged from a real, live American taxpayer now or (with interest) in the future. And that tax burden, whenever it falls due, is a disincentive to wealth accumulation today. When, after just six months, David Stockman flamed out attempting to cut giveaways to Republican interest groups (defense contractors, agribusiness, developers, small business, etc.), he had taken the one honest stab the GOP was to make at cutting tax burdens for working-class Americans.

The shame is that lowering the burden of government could be done in a humane, progressive, and dynamic fashion that would greatly increase chances for civility and upward mobility in an America of the future. (Slashing some ridiculously high marginal rates for upper-income workers did, in 1981 and 1986, add revenue to the federal budget.) But in cowering from tough choices on what to cut in a federal budget dripping with pork, the beef of tax-rate reduction was almost thoroughly squandered by Kempian quackery and Republican opportunism.

Snake oil is sold from all sides of the political spectrum, as the Keynesian poseurs and the supply-side hucksters should slickly attest. But that, of course, is what our two-party system is all about.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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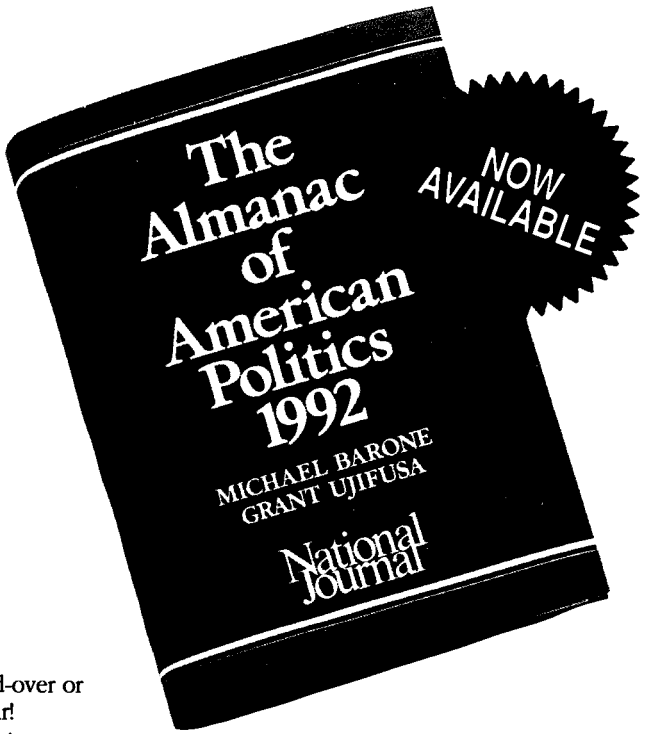

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